TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 347.

MARIE P. EVANS, WIFE OF WILLIAM R. EVANS, AND WILLIAM R. EVANS, APPELLANTS,

vs.

THE STATE NATIONAL BANK OF THE CITY OF NEW ORLEANS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED MARCH 31, 1888.

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1 *Bill. Filed Jan'y* 11, 1876.

Be it remembered that on the 11th day of January, 1876, Mrs. Marie P. Evans and William R. Evans, her husband, filed in the hon. the circuit court of the United States for the fifth circuit and district of Louisiana, holding sessions at New Orleans, Louisiana, at the November term, 1875, thereof, a bill of complaint against David Urquhart and The State National Bank, defendants, being No. 7672 of the equity docket of the said court, and afterwards the pleadings and proceedings hereinafter recited were filed and had; all of which are in words and figures as follows, viz:

Bill of Complaint. Filed 11th Jan'y, 1876.

To the honorable the judges of the circuit court of the United States for the fifth judicial circuit and district of Louisiana:

Marie P. Evans and William R. Evans, of the city of Philadelphia, and citizens of the State of Pennsylvania, bring this their bill of complaint against David Urquhart, of the city of New Orleans, and a citizen of the State of Louisiana, and the State National Bank of the City of New Orleans, a corporation located and domiciled in the city of New Orleans and State of Louisiana.

And thereupon your oratrix and orator complain and say that before, at, and during the several dates and times of the
2 acts and doings of the said above-named defendants one Stephen D. Linton was the owner and possessor of a certain tract, piece, or parcel of land situate, lying, and being in the parish of Rapides, known as the Quantico plantation, consisting of about eighteen hundred acres; that at that time your oratrix was the lawful wife of said Stephen D. Linton, and so continued until the death of the said Stephen D. Linton, which occurred in the city of Paris, France, on or about the fifteenth day of December, 1867; that the said Stephen D. Linton, by his last will and testament, made and executed on or about the twentieth day of December, 1863, devised all his property, real and personal, including the above-described plantation, to your oratrix; that said will has been duly probated in Alexandria, parish of Rapides and State Louisiana, before the proper tribunal having cognizance of the same, wherein and whereby your oratrix has been declared and recognized as universal legatee and sole heir of Stephen D. Linton, deceased; all which will appear from the proof and records of the same, to be produced on the hearing of this cause; that afterwards and on or about the tenth day of February, 1870, your oratrix was married to and became the wife of your orator, the above-named William R. Evans, who
3 is joined with your oratrix in this complaint as one of the complainants for the protection of whatever interest there may be accruing to him by reason of such marital relations.

Your oratrix and orator further show that by reason of the last will and testament of the said Stephen D. Linton and the recog-

nition of the rights and privileges appertaining to the position of your oratrix as such legatee and sole heir of said Stephen D. Linton she became possessed of all the rights and privileges connected with such legateeship and heirship of, in, and to the said above mentioned and described piece and parcel of land and everything connected therewith which belonged to and was possessed by the said Stephen D. Linton during his lifetime and which accrued to him up to the time of his death and subsequently thereto.

They further show and aver that on or about the fifteenth day of March, A. D. 1861, the defendant David Urquhart, under some proceeding unknown to the complainants, but which they believe to be an unauthorized judicial process, seized and took possession of the above described and mentioned piece or parcel of land without the knowledge, authority, concurrence, or consent of the said
4 Stephen D. Linton, the then owner thereof, and so held and continued — the same until on or about the twentieth of October, A. D. 1866; that during the time of such occupation by said David Urquhart and on or about the twenty-first day of August, A. D. 1863, the defendants The State National Bank of the City of New Orleans, then known as the "Louisiana State Bank," joined with the said defendant, David Urquhart, in the possession and occupancy of the said above mentioned and described piece or parcel of land and continued in such possession and occupancy until on or about the — day of January, A. D. 1869; that at the time of such possession and occupation of the said piece or parcel of land by the said David Urquhart there was upon the same a large quantity of stock, farming utensils, cotton, and other property, the precise amount whereof is unknown to the complainants, but which they aver to be at least of the value of seven hundred and fifty thousand dollars, which continued in the possession of the said defendant, David Urquhart, until the date of the joint occupancy and possession of the said defendant, David Urquhart, and the "Louisiana State Bank," whose successor is the defendant The State National Bank of the City of New Orleans; that during the said joint occupation and possession of the said defendants other stock, farming utensils,
5 cotton, and property connected with the said plantation or piece of land, amounting to about the sum of seven hundred thousand dollars, came into the possession and under the control of the said defendants, in the whole amounting to the sum of one million four hundred thousand dollars; that during the said joint occupation of the said property and land by the said defendants the same was used and disposed of by them and the proceeds thereof retained and kept or appropriated to other purposes than for the benefit of the property so as aforesaid held by them, but to whom the same was sold, when the same was sold, the amounts realized therefor, and the amounts kept and retained by the said defendants and each of them respectively, and how appropriated, these complainants are utterly ignorant, and by this their bill of complaint pray an accounting therefor as hereinafter interrogated.

Your oratrix and orator further show that at the time above mentioned, when the alleged occupation of the defendants The "Louisi-

ana State Bank," now the State National Bank, the said Louisiana State Bank was a corporation organized under the laws of the State of Louisiana and so continued until on or about the — day of January, 1871, when the said "Louisiana State Bank" was changed
6 into and became the organization or corporation now known as the State National Bank of the City of New Orleans, and as such last-named institution succeeded to all the rights, privileges, and liabilities of the said above-named Louisiana State Bank, and is the proper defendant in this action.

These complainants further show that during the period of time as hereinbefore sat forth that the defendants so held the control and possession of the above-mentioned and described property they had the entire and exclusive control of the same and exercised the rights and privileges as mortgagees in possession of the said land and premises, and as such entered into and engaged in the business of raising crops of cotton and other farming and planting business, from which they realized large and considerable sums of money by the sale thereof, to an amount, as the complainants are informed and believe and so aver the fact to be, the sum of one hundred and fifty thousand dollars, for which and the full particulars thereof these complainants pray a full and accurate statement and account, to which they are equitably entitled.

That the defendants pretend and allege that they are and were entitled to the use of the said property and the retention of
7 the proceeds of the sales of the same as the holders of certain mortgage notes made by the said Stephen D. Linton, and that by virtue thereof, without the adjudication of a proper legal tribunal giving to the said defendants the right of possession of said property, they were entitled to enter into the entire and exclusive control and occupation of the said land and premises and the appropriation of the property situated thereon and the products of the said land during such occupation of said defendants, whereas these complainants charge the contrary thereof to be the truth; that all such pretenses of the said defendants were without foundation or justification for the acts and proceedings of said defendants, as hereinbefore alleged and set forth.

Your oratrix and your orator further show that by reason of the declaration and recognition of the said Marie P. Evans, one of the complainant's heirs, as universal legatee and sole heir of and under the last will and testament of said Stephen D. Linton, these complainants are entitled to have and demand from the defendants a full and perfect accounting of the property so as aforesaid alleged and stated to have been in their use and possession, as well as the receipts and retention of all proceeds realized from the sale
8 of the products of the said land and premises above described while in their use and occupation, as hereinbefore set forth, and all other matters relative and appertaining to such use and occupation for the period above set forth, and which the said defendants have hitherto refused to give, allow, or consent to, although they have been frequently requested and demanded so to do, to the manifest injury of the said complainants.

All which actings, doings, and pretenses of the said defendants are contrary to equity and good conscience and tend to the manifest wrong, injury, and oppression of your oratrix and orator in the premises.

In consideration whereof and forasmuch as your oratrix and your orator are entirely remediless in the premises, according to the strict rules of the common law, and can only have relief in a court of equity, where matters of this nature properly cognizable and relievable:

To the end, therefore, that the said defendants may, if they can, show why your oratrix and your orator should not have the relief hereby prayed, and may, upon their and each of their several and respective corporal oaths and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to all
9 and singular the matters hereinbefore stated and charged as fully and particularly as if the same were hereinafter repeated and they thereunto distinctly interrogated, and more especially that they and each of them may full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written they are respectively required to answer—that is to say, to the defendant David Urquhart:

First. Whether he did not, and if he answers in the affirmative, at what time, under what circumstances, and in what manner, enter into the occupation, possession, and control of the property of the above-named Stephen D. Linton, known as the Quantico plantation, situated near Alexandria, in the parish of Rapides and State of Louisiana; by what authority such occupation, possession, and control was made or effected; who, at the time, was in the occupation of said premises; what property was upon the said place or plantation; state its description and value; whether, if any one, and who was placed in charge of the said place or plantation; and whether any, and, if so, what, orders or instructions were given to such agent or custodian; how long and up to what time such occupation, possession, and control was held by the said defendant, by himself or jointly with the said defendant, the then "Louis-
10 iana State Bank," and now "State National Bank of the City of New Orleans."

Second. Whether or not he at any time, and when, knew or had knowledge of the said "Louisiana State Bank," an organization or corporation doing business in the city of New Orleans, or its successor, the State National Bank of the City of New Orleans; where he first knew the said institutions or corporations or either of them, who were its managers or officers; whether or not he had any agreement or arrangement with the said institutions or corporations or the officers and managers thereof or any of them, and whom, relative to the occupation, possession, and control of the said above mentioned and described place or plantation, setting forth fully and specifically the nature, terms, and conditions of any such agreement or agreements.

Third. Whether or not at any time during such occupation, possession, or control and before any joint occupation, possession, or control of said place or plantation with the defendant The Louisiana State Bank and its successor, the State National Bank, any property of any kind obtained from said place or plantation was sold by the said defendant or for his account by any agent or otherwise, and to whom the same was sold, the amount realized therefrom; in what manner the said amount or any part thereof
11 was paid to or received by said defendant; what became of or what was done with the said amount or any part or portion thereof. State fully and specifically.

To both defendants:

First. Whether or not, and at what time, the joint occupation, possession, and control of the said place or plantation occurred and took place; by what authority such occupation, possession, or control was made or effected; who at the time was in the occupation of said premises; what property was upon the said place or plantation; state fully its description, character and value; whether if any person or persons, officer or officers, agent or agents, or custodian was or were put or placed in charge of the said place or plantation, and whether any, and, if so, what, orders, directions, or instructions were given to such person or persons, officer or officers, agent or agents, or custodian; how long and up to what date or time such occupation, possession, or control of said place or plantation was held by the said defendants or either of them and which, setting forth the times and dates specifically.

Second. Whether or not during such occupation, possession, or control any property of any kind, and, if so, what, was obtained
12 or came into the possession of the defendants or either of them and which that came or was in any way derived from the said place or plantation, and if the same was sold or disposed of by the said defendants or either of them and by which, or for whose account, by any agent or otherwise, and by whom and to whom the same was so sold, the amount realized therefrom, in what manner the said amount or any part thereof was paid to or received by the said defendants or either of them, and which; what became of or was done with the said amount or any part or portion thereof. Set forth the same fully and specifically.

Third. Whether there was any, and what, agreement made or entered into between the said defendants respecting the occupation, possession, or control of the said place or plantation or the use of the same, or the sale, assignment, transfer, or other disposition of the property or any portion thereof which came upon or was derived from the said place or plantation during the said occupation, possession, or control, or the division or other disposition of the proceeds of said property or any portion thereof.

To the defendant the State National Bank:

13 First. Whether and when the organization of the institution or corporation known as the Louisiana State Bank was effected; who was or were its officers, president, cashier, and directors, prior and up to the twenty-first day of August, 1863; how

long thereafter such organization or corporation continued, and whether and when any change and, if so, what was such change and how effected, whereby the said banking institution became the State National Bank of the City of New Orleans; who became the president, cashier, and directors of such State National Bank, and what agreement, contract, or arrangement was made between the Louisiana State Bank and the State National Bank or any of the directors or managers of the said corporations in relation to the stock, capital, business, property, suits, choses in action, judgments, or other assets of the Louisiana State Bank and the transfer thereof to the State National Bank, and when and how the same was so made and between whom, and who were the parties by whom the same was so made. If the same was made in writing, set forth a copy or copies thereof in answer to this interrogatory.

Second. Whether or not the books of accounts and all other property which belonged to and was in the possession of the said
14 Louisiana State Bank did not come into the possession of the said State National Bank, and whether or not there are entries and statements made in any of the said books of the receipts of proceeds of property sold by the said Louisiana State Bank or some of its officers, and, if so, whom, which came from the said place or plantation during the occupation, possession, or control thereof by the said defendants or the Louisiana State Bank and said David Urquhart, and if there are any such accounts or statements set forth the same truly, fully, and specifically and every entry and statement relating thereto.

And that the said defendants may be required to make, render, and give a full, true, and complete account of all their proceedings and actions relative to the sale, transfer, and other disposition of the property which came into their possession or control as derived from the occupation, possession, or control of the place or plantation as above described, and to state the amount derived therefrom, from whom derived, from what particular property derived, when and what disposition was made thereof, the times and dates of the reception and disposition of such property or the proceeds thereof, and that the same may be referred to a master of this court to
15 take and state an account thereof, and when ascertained that there may be a decree entered in favor of your oratrix and orator for such sums or amounts as may be found due to them or either of them upon such accounting, and that your oratrix and your orator may have such further and other relief in the premises as the nature of this case requires and as to your honors shall seem meet and according to equity and good conscience.

May it please your honors to grant unto your oratrix and your orator the most gracious writ of subpœna of the United States of America, to be directed to the said David Urquhart and the State National Bank of the City of New Orleans, thereby commanding them and every of them, at a certain day and under a certain penalty to be therein specified, personally to be and appear before your honors in this honorable court and then & there to answer all and singular the premises and to stand to, perform, and abide such order

and decree therein as to your honors shall seem meet and agreeable to equity and good conscience.

And your oratrix and orator will ever pray, etc.

(Signed) McENERY, ELLIS & ELLIS,
Solicitors for Complainants.

(Signed) MARIE PERKINS EVANS.

16 UNITED STATES OF AMERICA, *District of Louisiana,* } ss:

Marie P. Evans, one of the complainants in the foregoing bill of complaint, being duly sworn, says that she is one of the complainants in the foregoing bill of complaint named and has read the same and knows the contents thereof; that the said bill is true of her own knowledge except as to those matters which are therein stated to be on information and belief, and as to those matters she believes it to be true.

(Signed) MARIE P. EVANS.

Sworn to and subscribed before me this 10th day of January, A. D. 1876.

[SEAL.] (Signed) R. H. SHANNAN,

Commissioner U. S. Circuit Court for District of Louisiana.

Appearance of State National Bank. Entered 6th March, 1876.

MARIE P. EVANS & WM. R. EVANS *vs.* DAVID URQUHART *et als.* } No. 7672. In Equity.

The clerk will please enter an appearance in the order book for The State National Bank of New Orleans, one of the defendants therein.

(Signed) J. McCONNELL, *Solicitor.*

17 *Plea of the State National Bank. Filed 3rd April,* 1876.

MARIE P. EVANS and WM. R. EVANS, Her Husband, *vs.* DAVID URQUHART and THE STATE NATIONAL BANK OF NEW ORLEANS. } No. 7672. In Equity.

The plea of The State National Bank of New Orleans, one of the defendants herein, to the bill of complaint of Marie P. Evans and her husband, Wm. R. Evans, complainants.

This defendant, by protestation, not confessing or acknowledging the matters and things in and by said bill set forth and alleged to be true in such manner and form as the same are thereby and therein set forth and alleged, for plea to the whole of said bill and

to all the discovery and relief sought and prayed for by said complainants' said bill, this defendant doth plead thereunto and for cause of plea says that the said Stephen D. Linton, named in complainants' bill, died, as is averred in said bill, in the city of Paris,
France, on or about the 15th day of December, 1876, and this
18 defendant avers that his succession was duly opened in the proper court of the parish of Rapides, in the State of Louisiana, on the 11th of March, 1868, as suit No. 1171 of said court, on which day a petition was filed in said court by Coleman M. Calvitt, setting forth the death as aforesaid of the said Stephen D. Linton, and alleging that he died intestate and left property and effects in said parish of Rapides and also a large number of creditors in this State, and that an administration was necessary, and praying that said Calvitt should be appointed curator of said succession, and that an inventory and appraisement of the effects of said succession should be made according to law; that upon notice being given of said application an opposition was filed thereto by Jules A. Blanc,
president of the Louisiana State Bank, alleging that said
19 bank was a large creditor of said succession, and that said Calvitt was not a creditor thereof nor a relative of the deceased, and praying that instead of said Calvitt the said Blanc should be appointed curator of said succession; and this defendant further says that on the 8th of October, 1868, on the application of said Blanc, the said court appointed John H. Randell provisional curator and guardian of the property of said succession, and ordered him to be put in possession of the same, and that he was put in possession.

That subsequently, on the 17th of December, 1868, upon the petition of the Louisiana State Bank, the Bank of Louisiana, and Madame Anna de Borgne, claiming to be creditors of said succession, an inventory of the property of said succession was taken by order of court and duly returned and filed in the mortuary proceedings, from which it appears that the entire assets of said succession were appraised at the value of seventeen thousand one hundred dollars.

And this defendant further says that other proceedings were thereafter had in the matter of said succession before said court
not material to be set forth here, and that on the 14th of Sep-
20. tember, 1870, a petition was filed therein by Orestes K. Hawley, public administrator of said parish of Rapides, setting forth that said succession was a vacant one, and that there was a contest then pending in said court for the curatorship thereof, and praying that he be appointed administrator thereof, as provided by law, and that he be put in possession of the property and effects of said succession and for an inventory thereof to be taken, and that an inventory was taken accordingly on the 20th September, 1870, and duly returned and filed in the said mortuary proceedings, and that from said inventory it appears that the entire assetts of said succession were appraised at the value of twenty-seven thousand six hundred dollars.

And this defendant further says that subsequently by judgment

of said court rendered on the 17th of March, 1871, the said Orestes K. Hawley, public administrator, was duly appointed administrator of said succession and was ordered to be put in possession of the property of the same and was so put in possession.

That subsequently, on the 3rd of May, 1871, the said administrator filed a tableau of debts acknowledged by him to be due by said succession, amounting in principal to the sum of
21 $121,046.66⅔, with a large amount of interest thereon, of which amount the sum of $86,666.66⅔, with large arrearages of interest, is set forth as due by said succession to the Louisiana State Bank.

And this defendant says that it appears from said inventories and said tableau of debts that the said succession was and is heavily insolvent, and that there would be nothing coming therefrom to any heir, testamentary or other, of said Stephen D. Linton.

And this defendant further says that subsequently to the filing of said tableau of debts as aforesaid various other proceedings were had in said court in due course of administration of said succession, not material to be set forth here, except that upon the oath of said administrator that the Hon. H. L. Daigre, parish judge, had been attorney in said succession; he was recused in all proceedings and suits connected therewith, and all proceedings connected therewith were had, as required by law in such cases, before the district judge.

That on the 9th of January, 1872, a petition was filed in said mortuary proceeding by Mary P. Linton and Charlotte B. Linton, Widow Surget, sisters of said S. D. Linton, and claiming to
22 be his sole heirs and accepting his succession with benefit of inventory and praying that the appointment of said public administrator to administer said succession should be vacated on the ground that the court was without jurisdiction over said succession, for the reason, as they alleged, that the deceased was never at any time a resident of the parish of Rapides, but was a resident at the time of his death of the parish of Orleans.

That subsequently J. Madison Wells, Jr., was appointed public administrator vice said O. K. Hawley, and became party to said mortuary proceedings on the 7th of July, 1873, and succeeded said Hawley *ex officio* in the possession and administration of the property and assets of said succession.

That subsequently, on the 19th of January, 1875, the said Charlotte B. Linton, Widow Surget, and the said Mary P. Linton filed another petition and opposition in said mortuary proceedings, again praying that the appointment of the public administrator to administer upon said estate should be vacated for the same reasons assigned in the petition previously filed by them, and praying further that should the parish of Rapides be adjudged to be the place for
23 the mortuary proceedings to be conducted that their attorney, T. C. Manning, whom they had especially appointed to represent them by procuration duly executed, should take charge of said succession in their name as heirs, and that they should be recognized as heirs, and that, in that capacity, the property of the

succession should be delivered to them, subject to such claims as the creditors may lawfully have against it.

That subsequently various proceedings were had upon this petition, testimony taken, and the matter submitted to the court in due course, and that on the 30th of Jan'y, 1875, a final judgment was rendered therein, dismissing the said opposition; that from said judgment an appeal was taken by the said sisters of the said S. D. Linton to the supreme court of the State, and the said judgment was by the said court duly affirmed; all of which matters connected with said mortuary proceedings will more fully appear on reference being had to a duly certified copy thereof, herewith filed as Exhibit A.

And this respondent says that on the 25th day of May, 1875, before H. L. Daigre, parish judge of the parish of Rapides, a
24 certain paper purporting to be the last will of the said S. D. Linton, in olographic form, whereby his wife, Mary Linton, is constituted the sole and exclusive inheritor of any property he may have at the time of his death, which paper was dated at Matamoras in the year 1863, was probated as the last will of said S. D. Linton and ordered to be executed upon the petition of Henry Perkins.

That the said proceedings were entirely *ex parte* in so far as the said public administrator, who was then in possession of and administering upon the property of said succession, was concerned.

That an inventory was prayed for, taken, and returned and filed, on the 14th of August, 1875, on the petition of said Mary Linton as universal legatee, from which it appears that the entire property of said succession consisted in a claim or interest then pending on appeal in the supreme court, the lands being appraised at $18,000, the interest of the succession therein, and then in litigation, not being appraised for the reason that the appraisers state they know nothing as regards the interest of the succession therein.

25 And this defendant further says that on the petition of said Mary Linton and her husband by second marriage, Wm. R. Evans, *ex parte* and without notice or citation — the said public administrator, then in the actual possession and administration of the said succession, as fully appears from said mortuary proceedings set forth in said Exhibit A, a judgment was rendered on the 13th of July, 1875, by the said H. L. Daigre, parish judge of the parish of Rapides, who, as appears from said mortuary proceedings set forth in said Exhibit A, had been formally recused on oath by the said public administrator as having been attorney in said succession in all proceedings and suits connected therewith, putting the said Marie Linton, as universal legatee, in possession of the effects, rights, and credits of the said succession.

And this defendant says that he is advised that the said judgment of the 13th July, 1875, so rendered *ex parte* and without citation of the administrator in actual possession and administration of the succession, is not voidable merely, but absolutely void and inoperative, and that the said succession is still in legal intendment,
26 as it is in fact, in the possession and control and subject to

the administration of said public administrator, J. Madison Wells, Jr., and that, such being the case, the complainant Marie P. Evans is not entitled as testamentary legatee or heir to call upon this defendant for the discovery and relief prayed for in the bill, as this defendant, if accountable at all in the premises—which is not admitted, but expressly denied—is accountable, pending administration of the said estate, to the said administrator in possession thereof only, and that in any event the said administrator is a necessary party to any suit for discovery and account from the defendant in the premises.

All of which matters and things this defendant doth aver to be true and pleads the same to the whole of said bill, and humbly prays the judgment of this honorable court whether it behooves said defendant to make any other or further answer thereto than as aforesaid, and prays to be hence dismissed with reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) J. McCONNELL, *Solicitor.*

27 I (J. McConnell), solicitor for (the State National Bank), hereby certify that the foregoing pleas are in my opinion well founded in point of law.

(Signed) J. McCONNELL.

Samuel H. Kennedy, being first duly sworn, deposes that he is the president of The State National Bank of New Orleans, defendant herein; that the foregoing pleas are not interposed for delay; and further says that the facts set forth in the foregoing pleas are true to the best of his knowledge, information, and belief.

(Signed) SAM'L H. KENNEDY.

Sworn to & subscribed at New Orleans this 3rd day of Ap'l, 1876, before me.

(Signed) J. G. EUSTIS,
[SEAL.] *U. S. Commissioner for the District of Louisiana.*

28 *Judgment Pro Confesso. Filed 8th April,* 1876

MARIE P. EVANS & WM. R. EVANS, Complainants,
vs.
DAVID URQUHART & THE STATE NATIONAL BANK OF THE CITY OF NEW ORLEANS, Defendant. } In Equity.

The subpœna issued in this cause having been returned, which return has been filed, and it appearing therefrom that the said subpœna was duly served on David Urquhart, one of the defendants in the above cause, and an appearance having been entered, but no plea or answer has been filed by the said defendant; David Urquhart: Therefore, on motion of McEnery & Ellis, solicitors for the complainants, it is ordered and decreed that the bill herein be taken *pro confesso* as to said defendant.

Extract from the Minutes, November Term, 1875.

Present: Hon. W. B. Woods, circuit justice.

APRIL 17TH, 1876.

29 MARIE P. EVANS *et als.*
vs.
DAVID URQUHART & STATE NATIONAL BANK. } 7672.

Upon motion of McEnery & Ellis, solicitors for the complainants in the above-entitled cause, it is ordered that this cause be set down for a hearing upon the plea filed herein by the defendant The State National Bank of the City of New Orleans for Monday, the first day of May, A. D. 1876, at the opening of this court on that day, or as soon thereafter as counsel can be heard.

April Term, 1876.

MAY 1ST, 1876.

On motion of R. H. Shannon, solicitor for complainants, ordered that the plea in this cause be set down for hearing on Monday, 8th instant, at 11 a. m., and that defendants be notified.

Judgment Pro Confesso Set Aside. Filed 1st May, 1876.

MARIE P. EVANS & WM. R. EVANS, Complainants,
vs.
DAVID URQUHART and THE STATE NATIONAL BANK OF THE CITY OF NEW ORLEANS, Defendants. } No. 7672. In Equity.

An order in the above-entitled cause having been entered on the 8th of April, 1876, under a misapprehension as regards
30 the appearance of David Urquhart, one of the defendants, taking the default against said defendant, and that the bill of complaint be taken as confessed against said defendant, now, on motion of W. H. Hunt and R. H. Shannon, solicitors for the complainants, it is ordered that the said order entered herein on the 8th of April, A. D. 1876, be, and the same is hereby, set aside.

Plea of David Urquhart. Filed 5th May, 1876.

MARIE P. EVANS and WM. R. EVANS, Her Husband,
vs.
DAVID URQUHART and THE STATE NATIONAL BANK OF NEW ORLEANS. } No. 7672. In Equity.

The plea of David Urquhart, one of the defendants herein, to the bill of complaint of Marie P. Evans & her husband, Wm. R. Evans, complainants.

This defendant, by protestation, not confessing or acknowledging

the matters and things in and by said bill set forth and alleged to be true in such manner and form as the same are thereby and therein set forth and alleged, for plea to the whole of said bill and to all the discovery and relief sought and prayed for by said
31 complainants' said bill, this defendant doth plead thereunto and, for cause of plea, says that the said Stephen D. Linton, named in complainants' bill, died, as is averred in said bill, in the city of Paris, France, on or about the 15th day of December, 1867; and this defendant avers that his succession was duly opened in the proper court of the parish of Rapides, in the State of Louisiana, on the 11th of March, 1868, as suit No. 1171 of said court, on which day a petition was filed in said court by Coleman M. Calvitt, setting forth the death, as aforesaid, of the said Stephen D. Linton and alleging that he died intestate and left property and effects in said parish of Rapides, and also a large number of creditors in this State, and that an administration was necessary, and praying that said Calvitt should be appointed curator of said succession, and that an inventory and appraisement of the effects of said succession should be made according to law.

That upon notice being given of said application an opposition was filed thereto by Jules A. Blanc, president of the Louisiana State Bank, alleging that said bank was a large creditor of said
32 succession, and that said Calvitt was not a creditor thereof nor a relative of the deceased, and praying that instead of said Calvitt the said Blanc should be appointed curator of said succession.

And this defendant further says that on the 8th of October, 1868, on the application of said Blanc, the said court appointed John H. Randell provisional curator and guardian of the property of said succession and ordered him to be put in possession of the same, and that he was put in possession; that subsequently, on the 17th of December, 1868, upon the petition of the Louisiana State Bank, the Bank of Louisiana, & Madame Anna de Borgne, claiming to be creditors of said succession, an inventory of the property of said succession was taken by order of court and duly returned and filed in the mortuary proceedings, from which it appears that the entire assets of said succession were appraised at the value of seventeen thousand one hundred dollars.

And this defendant further says that other proceedings were thereafter had in the matter of said succession before said court not material to be set forth here, and that on the 14th September, 1870, a petition was filed therein by Oerestes K.
33 Hawley, public administrator of said parish of Rapides, setting forth that said succession was a vacant one, and that there was a contest then pending in said court for the curatorship thereof, and praying that he be appointed administrator thereof as provided by law, and that he be put in possession of the property and effects of said succession, and for an inventory thereof to be taken, and that an inventory was taken accordingly on the 20th September, 1870, and duly returned and filed in the said mortuary proceedings, and that from said inventory it appears that the entire assets of said

succession were appraised at the value of twenty-seven thousand six hundred dollars.

And this defendant further says that subsequently, by judgment of said court rendered on the 17th of March, 1871, the said Orestes K. Hawley, public administrator, was duly appointed administrator of said succession, and was ordered to be put in possession of the property of the same, and was so put in possession.

That subsequently, on the 3rd of May, 1871, the said administrator filed a tableau of debts acknowledged by him to be due
34 by said succession, amounting in principal to the sum of $121,046.66⅔, with a large amount of interest thereon, of which amount the sum of $86,666.66⅔, with large arrearages of interest, is set forth as due by said succession to the Louisiana State Bank.

And this defendant says that it appears from said inventories and said tableau of debts that the said succession was and is heavily insolvent, and that there would be nothing coming therefrom to any heir, testamentary or other, of said Stephen D. Linton.

And this defendant further says that subsequently to the filing of said tableau of debts as aforesaid various other proceedings were had in said court in due course of administration of said succession not material to be set forth here, except that upon the oath of said administrator that the Hon. H. L. Daigre, parish judge, had been attorney in said succession he was recused in all proceedings and suits connected therewith, and all proceedings connected therewith were had, as required by law in such cases, before the district judge.

That on the 9th of January, 1872, a petition was filed in said mortuary proceedings by Mary P. Linton and Charlotte B. Linton, Widow Surget, sisters of said S. D. Linton, and claiming to
35 be his sole heirs, and accepting his succession with benefit of inventory, and praying that the appointment of said public administrator to administer said succession should be vacated on the ground that the court was without jurisdiction on said succession for the reason, as they alleged, that the deceased was never at any time a resident of the parish of Rapides, but was a resident at the time of his death of the parish of Orleans.

That subsequently J. Madison Wells, Jr., was appointed public administrator, vice said O. K. Hawley, and became party to said mortuary proceedings on the 7th of July, 1873, and succeeded said Hawley, *ex officio*, in the possession and administration of the property and assetts of said succession.

That subsequently, on the 19th of January, 1875, the said Charlotte B. Linton, Widow Surget, and the said Mary P. Linton filed another petition and opposition in said mortuary proceedings, again praying that the appointment of the public administrator to administer upon said estate should be vacated for the same reasons assigned in the petition previously filed by them, and praying further that should the parish of Rapides be adjudged to be the place for the
36 mortuary proceedings to be conducted that their attorney, T. C. Manning, whom they had especially appointed to represent them by procuration duly executed, should take charge of said succession in their name as heirs, and that they should be recog-

nized as heirs, and that in that capacity the property of the succession should be delivered to them subject to such claims as the creditors may lawfully have against it.

That subsequently various proceedings were had upon this petition, testimony taken, and the matter submitted to the court in due course, and that on the 30th of January, 1875, a final judgment was rendered therein dismissing the said opposition.

That from said judgment an appeal was taken by the said sisters of the said S. D. Linton to the supreme court of the State, and the said judgment was by the said court duly affirmed, all of which matters connected with said mortuary proceedings will more fully appear on reference being had to a duly certified copy thereof, herewith filed as Exhibit A.

And this respondent says that on the 25th day of May, 1875, before H. L. Daigre, parish judge of the parish of Rapides, a
37 certain paper, purporting to be the last will of the said S. D. Linton, in olographic form, whereby his wife, Mary Linton, is constituted the sole and exclusive inheritor of any property he may have at the time of his death, which paper was dated at Matamoras in the year 1863, was probated as the last will of said S. D. Linton and ordered to be executed upon the petition of Henry Perkins.

That the said proceedings were entirely *ex parte*, in so far as the said public administrator who was then in possession of and administering upon the property of said succession was concerned.

That an inventory was prayed for, taken, and returned and filed on the 14th of August, 1875, on the petition of said Mary Linton, as universal legatee, from which it appears that the entire property of said succession consisted in a claim or interest then pending on appeal in the supreme court, the lands being appraised at $18,000, the interest of the succession therein and then in litigation not being appraised, for the reason that the appraisers state they know nothing as regards the interest of the succession therein.

38 And this defendant further says that on the petition of said Mary Linton and her husband by second marriage, Wm. R. Evans, *ex parte*, and without notice or citation to said public administrator then in the actual possession and administration of the said succession, as fully appears from said mortuary proceedings set forth in said Exhibit A, a judgment was rendered on the 13th of July, 1875, by the said H. L. Daigre, parish judge of the parish of Rapides, who, as appears from said mortuary proceedings set forth in said Exhibit A, had been formally recused on oath by said public administrator as having been attorney in said succession to all proceedings and suits connected therewith, putting the said Marie Linton, as universal legatee, in possession of the effects, rights, and credits of the said succession.

And this defendant says that *it* is advised that the said judgment of the 13th of July, 1875, so rendered *ex parte* and without citation of the administrator in actual possession and administration of the succession, is not voidable merely, but absolutely void and inoperative, and that the said succession is still in legal intendment,
39 as it is, in fact, in the possession and control and subject to

the administration of said public administrator, J. Madison Wells, Jr., and that such being the case the complainant Marie P. Evans is not entitled as testamentary legatee or heir to call upon this defendant for the discovery and relief prayed for in this bill, as this defendant, if accountable at all in the premises, which is not admitted, but expressly denied, is accountable, pending administration of the said estate, to the said administrator in possession thereof only, and that in any event the said administrator is a necessary party to any suit for discovery and account from the defendant in the premises; all of which matters and things this defendant doth aver to be true and pleads the same to the whole of said bill, and humbly prays the judgment of this honorable court whether it behooves said defendant to make any other or further answer thereto than as aforesaid, and prays to be hence dismissed with reasonable costs and charges in this behalf most wrongfully sustained.

40 I, B. F. Jonas, solicitor for David Urquhart, humbly certify that the foregoing pleas are, in my opinion, well founded in point of law.

(Signed) B. F. JONAS.

David Urquhart, being first duly sworn, deposes that he is a defendant herein; that the foregoing pleas are not interposed for delay; and further says that the facts set forth in the foregoing pleas are true to the best of his knowledge, information, and belief.

(Signed) DAVID URQUHART.

Sworn to & subscribed, at New Orleans, this 5th day of May, 1876, before me—

(Signed) F. B. VINOT,
U. S. Commissioner.

41 *Continuance.*

Extract from the Minutes, April Term, 1876.

MARIE P. EVANS *et als.*
vs.
DAVID URQUHART *et als.* } 7672.

NEW ORLEANS, MONDAY, *May 8th*, 1876.

By consent of counsel the plea of the State National Bank is continued till Monday, 15th instant, at 11 o'clock a. m.

MAY 15TH, 1876.

By consent of counsel the plea of the State National Bank of New Orleans is continued, by preference, till Monday, 22nd instant, at 11 a. m.

42 *Motion, Order, & Amended Plea of State National Bank. Filed 18th May*, 1876.

MARIE P. EVANS & WM. R. EVANS, Her Husband,
vs.
DAVID URQUHART & THE STATE NATIONAL BANK OF NEW ORLEANS.
} No. 7672. In Equity.

On motion of I. McConnell, of counsel for The State National Bank of New Orleans, one of the defendants in the above entitled and numbered cause, and on showing that on the 13th of April, 1876, the said bank filed its plea to the bill of complaint exhibited herein against it, and that said plea has not been replied to, and on suggesting that the said bank is now advised by reason of certain matters that have come to its knowledge since the filing thereof to amend its plea in the particulars hereinafter set forth, and the court considering the affidavit and exhibit herewith filed—

It is now ordered by the court that said bank have leave to ammend its plea as follows, to wit:

First. By inserting therein, immediately before the words "and that said succession is still in legal intendment," in the 24th and 25th lines of the 9th page of said plea, the following words, to wit:

And this defendant further says that on the 9th of Feb-
43 uary, 1876, the said J. M. Wells, Jr., filed in the said parish court of the parish of Rapides, State of Louisiana, a petition representing that since his appointment as administrator of the succession of said S. D. Linton a will has been found and probated in the records of said court and ordered to be executed, and that said will appoints no testamentary executor, and that petitioner, as public administrator, was entitled, in preference to all others, to the appointment of dative testamentary executor of said S. D. Linton, and that said J. M. Wells, Jr., in his said petition prayed that the court, after due proceedings had according to law, would appoint him dative testamentary executor of S. D. Linton; and this defendant says that thereupon such proceedings were had in said court *and* thereafter, by judgment in said court of the 15th of March, 1876, the said J. M. Wells — duly appointed according to law dative testamentary executor of said S. D. Linton; all of which, reference being had thereto, will fully and at large appear from a duly certified copy of said proceedings and said judgment of said court in the matter of the succession of said S. D. Linton, No. 248 of its docket, herewith filed and made part of this plea and marked
44 Exhibit B; and this defendant says that said J. M. Wells, Jr., has qualified and is now acting under said appointment as dative testamentary executor of said S. D. Linton as aforesaid.

Second. By inserting in said plea, immediately after the words J. Madison Wells, Jr., in the 29th line of the 9th page, the words following, to wit: Acting under said appointment of said court as dative testamentary executor of said S. D. Linton.

And it is further ordered that service of a copy hereof be made on the complainants through their solicitors.

Samuel H. Kennedy, being first duly sworn, deposes that he is the president of The State National Bank of New Orleans, one of the defendants herein; that the matters set forth in the foregoing amendments to the plea of said bank herein came to the knowledge of said bank after the filing of its original plea herein; and he further says that these amendments are not interposed for delay, and that the plea as amended is true in point of fact, to the best
45 of his knowledge, information, and belief.

(Signed) SAM'L H. KENNEDY.

Sworn to & subscribed, at New Orleans, this 18th day of May, 1876, before me—

(Signed) J. G. EUSTIS,

[SEAL.] *U. S. Comm'r for the Dist. of Louisiana.*

I hereby certify that in my opinion this plea as amended is well founded in point of law.

(Signed) J. McCONNELL, *Solicitor.*

46 *Motion. Entered 22nd May,* 1876.

Mrs. MARIE P. EVANS *et al.*
vs.
DAVID URQUHART *et al.* } No. 7672. In Equity.

And now comes into this honorable court McEnery, Ellis & Ellis, solicitors and attorneys of record of the complainants, Mrs. Marie P. Evans and her husband, Wm. R. Evans, in this bill in equity, and, for the reasons this day orally assigned, in open court move this hon. court for leave to withdraw as solicitors for complainants in said cause; which application was granted by the court.

47 *Continuance.*

Extract from the Minutes, April term, 1876.

MARIE P. EVANS *et als.*
vs.
DAVID URQUHART *et als.* } 7672.

NEW ORLEANS, MONDAY, *May 2nd,* 1876.

The plea of the State National Bank of New Orleans was called for trial—present, R. H. Shannon, Wm. H. Hunt, and James McConnell—when, by consent, the same is continued till the 30th instant, at 11 a. m.

48 *Petition. Filed 24th May*, 1876.

MARIE P. EVANS and WILLIAM R. EVANS, Complainants,
vs.
THE STATE NATIONAL BANK OF THE CITY OF NEW ORLEANS and DAVID URQUHART.
No. 7672. In Equity.

To the judges of the circuit court of the United States for the fifth judicial circuit and district of Louisiana:

The petition of the above-named complainants respectfully shows—

That the pleas filed herein by the defendants in the above-entitled cause have been filed by said defendants; that no testimony has been taken in the cause; that by the said pleas of said defendants they severally admit that they are in possession of certain exhibits stated in their said several pleas relating to the allegations set up in said pleas relating to what is claimed by them as a defence to the said suit of these complainants.

And your complainants further show that, in order to prepare for a hearing upon said pleas and to take issue thereon if they shall be so advised, they desire an inspection of said exhibits referred to and specified in the said pleas of the said defendants and admitted by the said defendants to be in their possession, and that
49 such inspection by the complainants or their counsel is necessary for the purposes hereinbefore set forth.

Your petitioners therefore pray that the said defendants may be ordered to produce to and leave with the clerk of this court the exhibits and papers above mentioned and referred to in the several pleas of the said defendants filed in this cause, and that your petitioners, their counsel, solicitors, or agent, may be at liberty to peruse the same and to take copies thereof or extracts therefrom, as they may be advised.

(Signed) MARIE PERKINS EVANS.

(Signed) W. H. HUNT,
(Signed) R. H. SHANNON,
Sol's for Compl's.

DISTRICT OF LOUISIANA, } *ss:*
City of New Orleans, }

On this 24th of May, A. D. 1876, Marie P. Evans, being duly sworn, says that she is one of the complainants in the above-entitled cause; that she has read the foregoing petition and knows the contents thereof, and that the same is true of her own knowledge, except as to those matters therein stated to be on information and
50 belief, and *and* as to those matters she believes it to be true.

(Signed) MARIE PERKINS EVANS.

Subscribed and sworn to before me this 24th day of May, 1876.
(Signed) J. A. CHARBONNET, *D'y C'k.*

MARIE P. EVANS and WILLIAM R. EVANS, Compl's,
vs.
THE STATE NATIONAL BANK OF THE CITY OF NEW ORLEANS and DAVID URQUHART.
No. 7672. In Equity.

Upon the foregoing petition and upon reading and filing the same, now, on motion of W. H. Hunt and R. H. Shannon, solicitors for the complainants, it is ordered that the defendants and each of them, within two days from the date of this order, produce to and leave with the clerk of this court the exhibits and documents referred to and admitted in the pleas of the several defendants to be in their possession, and that the complainants, their solicitors, agents, or counsel, may be at liberty to inspect and peruse the same and
51 to take copies thereof or extracts therefrom, as they may be advised, at their own expense; or, that the said defendants, on the 26th of May inst., at the opening of this court on that day, or as soon thereafter as counsel can be heard, do show cause before this court why the same should not be done.

And that until the production, filing, and inspection of said papers and exhibits by the complainants or their solicitors and counsel the time within which the said complainants shall have the right and liberty to reply to said pleas, if they shall be so advised, shall not be deemed to have expired.

May 24th, 1876.

(Signed) EDWARD C. BILLINGS, *Judge.*

62 *Affidavit of Service of Papers. Filed 25th May*, 1876.

MARIE P. EVANS and WILLIAM R. EVANS, Complainants,
vs.
THE STATE NATIONAL BANK OF THE CITY OF NEW ORLEANS & DAVID URQUHART.
No. 7672. In Equity.

DISTRICT OF LOUISIANA, *City of New Orleans*, } *ss:*

Adolph Bouchard, of the city of New Orleans, being duly sworn, says that on the 24th of May, 1876, he served copies of the annexed petition and order upon J. McConnell, Esq., solicitor for the defendant The State National Bank, &c., by leaving the same, between the hours of 9 a. m. and 3 p. m. of said day, in a conspicuous place in the office of said McConnell, the said McConnell at the time of said service being absent from said office; that on the same day he served copies of said petition and order upon B. F. Jonas, Esq., solicitor for defendant David Urquhart, by leaving the same, between the hours of 9 a. m. and 3 p. m. of said day, in a conspicuous place in the office of said Jonas, the said Jonas at the time of said service being absent from said office.

(Signed) A. BOUCHARD.

Subscribed & sworn to before me this 25th day of May, A. D. 1876.
(Signed) F. B. VINOT,
U. S. Comm'r.

53 *Continuance.*

Extract from the Minutes, April Term, 1876.

MARIE P. EVANS *et als.*
vs.
STATE NATIONAL BANK. } No. 7672.

MAY 26TH, 1876.

In compliance with the order of 24th instant, the defendant this day appeared and filed the document called for.

54 *Order to Withdraw. Filed 27th May,* 1876.

MARIE P. EVANS & WILLIAM R. EVANS,
Compl's,
vs.
THE STATE NATIONAL BANK, &c. } No. 7672. In Equity.

Under an order of this court certain exhibits have been filed by the defendants in this cause, and upon suggesting to the court that the solicitors for the complainants desire to make an examination of said exhibits, &c., now, upon motion of W. H. Hunt & R. H. Shannon, solicitors for complainants, it is ordered that they have permission to withdraw from the records of this court the said exhibits for the space of five days from the date of this rule or order for the purpose of making such examination and to take copies of said exhibits or extracts therefrom.

May 27th, 1876.
(Signed) EDWARD C. BILLINGS, *Judge.*

55 *Replication to Pleas, &c. Filed 30th May,* 1876.

MARIE P. EVANS and WILLIAM R. EVANS,
Complainants,
vs.
THE STATE NATIONAL BANK OF THE CITY OF NEW ORLEANS and DAVID URQUHART,
Defendants. } No. 7672. In Equity.

The replication of Marie P. Evans and William R. Evans, complainants, to the pleas of the defendants above named.

These repliants, saving and reserving to themselves, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said pleas, for replication thereunto say that they will aver, maintain, and prove their bill of complaint to be true, certain, and sufficient in law to be answered or plead thereunto.

And for further reply to said pleas of the said defendants these complainants aver and admit that certain legal proceedings were had in the parish of Rapides, but the nature, extent, and effect of said proceedings these complainants deny to be such as is charged in the said pleas, as will appear from the said proceedings themselves or from a true copy thereof, to which they crave leave hereafter to refer. They admit that a judgment was rendered on the 13th of July, A. D. 1875, putting the complainant, the said Marie P. Evans,
in possession of the said succession as sole heir thereof, ac-
56 cepting the same purely and simply. They aver that she has
been placed in possession of the property of the said succession, and is now in possession thereof, and that said judgment is valid and binding and cannot be called in question herein; that these complainants have no knowledge of the matters set up in the supplemental or amended plea of the defendant, The State National Bank of the City of New Orleans, filed herein on the 18th of May, A. D. 1876, and that the documents purporting to be a copy of an original on file in the clerk's office, Alexandria, and certified under date April 4th, 1876, is not duly authenticated and ought not to be referred to as though the same were a true copy of a judicial proceeding; but if it were in truth what it purports to be, that the proceedings therein recited are illegal and void and were had since the institution of this suit in order to defeat the jurisdiction of this court; that the said J. Madison Wells, Jr., is not a necessary party to this suit, and has no interest in the same.

And that the said pleas in respect to those matters therein stated, other than as are herein replied unto, are uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said pleas contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

(Signed) R. H. SHANNON.
WM. H. HUNT, *Sol'r.*

57 *Plea Fixed for Trial.*

Extract from the Minutes, April Term, 1876.

MARIE P. EVANS *et als.* }
vs. } 7672.
DAVID URQUHART *et als.* }

MAY 31ST, 1876.

By consent of counsel the plea in this cause is set for hearing on Monday, 5th June, 1876, at 11 a. m.

58 *Order. Filed 3rd June*, 1876.

MARIE P. EVANS and WILLIAM R. EVANS, Complainants, *vs.* DAVID URQUHART and THE STATE NATIONAL BANK OF THE CITY OF NEW ORLEANS. } No. 7672. In Equity.

Upon motion of William H. Hunt and R. H. Shannon, solicitors for the complainants, it is ordered that the complainants have leave to file a supplemental bill in the above cause, making J. Madison Wells, Junior, a party to the same.

59 *Supplemental Bill of Complaint. Filed 3rd June*, 1876.

MARIE P. EVANS and WILLIAM R. EVANS, Complainants, *vs.* THE STATE NATIONAL BANK OF THE CITY OF NEW ORLEANS, DAVID URQUHART. } No. 7672. In Equity.

To the honorable the judges of the circuit court of the United States for the fifth judicial circuit and district of Louisiana:

Marie P. Evans and William R. Evans, of the city of Philadelphia and State of Pennsylvania, exhibit this their supplemental bill of complaint against The State National Bank of the City of New Orleans, a corporation located and domiciled in the city of New Orleans; David Urquhart, of the city of New Orleans, and J. Madison Wells, Junior, of the parish of Rapides, defendants, all of whom belong to the State of Louisiana, and residents of said State.

The said complainants, humbly complaining, show unto your honors—

That your oratrix and orator did, on the — day of January, A. D. 1876, exhibit their original bill of complaint in this honorable court against the said defendants, David Urquhart and The State National Bank of the City of New Orleans; that on or about the — day of January, A. D. 1876, due service was made upon the said
60 defendants of the said bill or a true copy thereof, together with the proper process of this honorable court requiring the said defendant to appear and answer the same; that in and by the said bill of complaint the said defendants were required to make upon oath full, true, direct, and perfect answer to all and singular the matters charged and set forth in said bill, and more especially the said defendants were required to make full, true, and perfect answer to certain interrogatories numbered and set forth in said bill of complaint, all which will the more fully appear in the said original bill of complaint, to which reference is hereby made; that the said defendants, in and by the said bill of complaint, were required to make, render, and give a full, true, and complete account of all

their proceedings and actions relative to the sale, transfer, and other disposition of property which came into their possession or control as derived from the occupation, possession, or control of a certain place or plantation stated and described in said bill of complaint as the "Quantico" plantation, situated at or near Alexandria, in the parish of Rapides and State of Louisiana, and which belonged
61 to one Stephen D. Linton, now deceased, whose sole legal heir and representative is the said complainant, Marie P. Evans, and to state the amount derived therefrom while the same was in the occupation, possession, and control of said defendants during the period stated and set forth in said bill of complaint, from whom the same was so derived, from what particular property derived, when and what disposition was made thereof, the times and dates of the reception and disposition of such property or the proceeds thereof; that in and by said bill it was also prayed that a full discovery might be made by the said defendants of the matters alleged and set forth in said bill, and that it might be referred to a master of this court to take and state an account thereof, and, when ascertained, that a decree might be rendered in favor of the said complainants for such sums or amounts as might be found to be due to them or either of them upon such accounting, and for all such other relief as the said complainants might be entitled to.

That after the service of the said process upon the said defendants the said defendant, The State National Bank of the City of New
62 Orleans, appeared, and on or about the — day of April, A. D. 1876, filed a plea in and to the said bill, and subsequently thereto and on or about the 18th of May, A. D. 1876, the same defendant filed an amended plea to said bill, in and by which said plea and amended plea the said defendant set up and alleged certain proceedings in and before certain local courts or tribunals in the parish of Rapides, alleged to have been taken and instituted by parties or authorities having no direct or legal interest in the property or estate of the said Stephen D. Linton, among whom is one J. Madison Wells, Junior, who, it is stated and set forth in said pleas, has by some illegal and unauthorized proceeding — is attempting to assume control over the property and estate of which the said Marie P. Evans is the sole and only legal heir and representative, as well as the testamentary executrix thereof.

That the said David Urquhart, the other of said defendants, has also appeared, and on or about the — day of May, A. D. 1876, filed a plea to said bill similar in effect, statement, and purport with that of the said defendant, The State National Bank; that to the said several pleas the complainants have filed a replication, which
63 was so done on the 30th of May, A. D. 1876.

That in and by the said replication these complainants allege and aver that the proceedings set up and alleged in the said pleas of the said defendants are without authority or force and effect as against the rights and claims set forth in their said bill of complaint; that the statement contained in said pleas that the said complainant, Marie P. Evans, was duly and properly appointed and recognized as universal legatee and sole heir of the said Stephen D.

Linton was admitted; that the proceedings set up and alleged in the amended plea of the said defendant, The State National Bank of the City of New Orleans, were taken and instituted for the purpose of depriving this honorable court of its jurisdiction of this suit, all which, with other matter, will more fully appear from the said several pleas, amended plea, and the said replication filed in this cause.

These complainants further aver and complain that the said defendants allege that the said J. Madison Wells, Junior, is and should be made a party to this suit, which allegation these complainants deny, with the statements that the said J. Madison Wells,
64 Junior, has no interest in this suit. These complainants further allege, aver, and complain that, in furtherance of the conspiracy, confederation, and combination charged and alleged in the original bill of complaint filed in this cause, the said defendant, The State National Bank of the City of New Orleans, through some of its officers or agents have instigated the said J. Madison Wells, Junior, who is hereby made a party defendant in this cause, to institute certain proceedings set up in the amended plea of the said defendant, The State National Bank of the City of New Orleans, which these complainants claim are entirely without authority, illegal, and void; that the said J. Madison Wells, Junior, being further instigated thereto by the said defendant, The State National Bank of the City of New Orleans, since the filing of the plea of the said defendant, by virtue of some illegal and unauthorized proceeding, without notice to or knowledge of these complainants or either of them, and more especially the said Marie P. Evans, the only universal legatee and sole heir of Stephen D. Linton, the former owner and proprietor of the said "Quantico" plantation, is surreptitiously proceeding to a sale of the said plantation, he, the said J. Madison Wells, Junior, having advertised the same to be
65 & 66 sold on the 14th of June, A. D. 1876, in the parish of Rapides, as these complainants are informed and charge the fact to be; that said sale is to be made by the sheriff of the said parish, and these complainants charge the said acts and doings of the said J. Madison Wells, Junior, are done and to be done at the instigation and with the concurrence and knowledge of the said defendant, The State National Bank of the City of New Orleans, or some of its attorneys, officers, or agents for the purpose of depriving the said Marie P. Evans, one of the said complainants, of her just and legal rights as the owner and possessor of the said "Quantico" plantation, to which she is entitled as such universal legatee and sole heir of the said Stephen D. Linton under her recognition as such, as stated in the original bill of complaint and admitted by the pleas of the said defendants named in said original bill of complaint, and also the complainants charge that said acts and doings of said J. Madison Wells, Junior, and the said The State National Bank of the City of New Orleans, as hereinbefore set forth, and the said contemplated sale of the said "Quantico" plantation are for the wrongful object and purpose of depriving the said Marie
67 P. Evans and these complainants of the possession of the said

plantation to which they are entitled under and by virtue of the legateeship and heirship of the said Marie P. Evans and her recognition as such under the proceedings referred to in the said bill of complaint, and for the unjust, wrongful, and illegal object and purpose of depriving the said complainants of their just and equitable rights, privileges, and authority over the said property and plantation described in the said bill of complaint and the benefits of the enjoyment thereof, and also that the said acts and doings of the said J. Madison Wells, Junior, and the said The State National Bank of the City of New Orleans are intended to be and are in flagrant contempt and violation of the authority of this honorable court.

That the said acts and contemplated acts of the said J. Madison Wells, Junior, will be consummated and are to be consummated in the interest of the said State National Bank of the City of New Orleans and to defeat the object of this suit and the claim set up in the said original bill of complaint, and that such consummation will be carried out and effected unless the said J. Madison
68 Wells, Junior, the sheriff of the parish of Rapides, the agents, officers, and attorneys acting with and under him, said J. Madison Wells, Junior, are restrained by a proper writ of injunction issued out of this honorable court.

These complainants, under the allegations and statements set forth in the original bill of complaint and the pleas of the said defendants named in said original bill and the matters contained and averred in this supplemental bill, pray that the said J. Madison Wells, Junior, may be made a party defendant with the other defendants in said suit, and these complainants are advised that they are entitled to the same relief against the said J. Madison Wells, Junior, as they are entitled against the said defendants, David Urquhart and The State National Bank of the City of New Orleans.

To the end, therefore, that the said defendants may, if they can, show why your complainants, oratrix and orator, should not have the relief hereby prayed, and may, upon their several and respective corporal oaths and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the sev-
69 eral interrogatories hereinafter numbered and set forth as by note hereunder written they are respectively required to answer—that is to say:

First. Whether or not the said J. Madison Wells, Junior, and when, was cognizant of the filing of the original bill of complaint in this cause, and whether or not after the filing of said bill of complaint the said J. Madison Wells, Junior, and the said The State National Bank of the City of New Orleans, through some of its officers, agents, or attorneys, and, if so, whom, did not make some agreement, arrangement, or understanding relative to the obtaining possession of or the surreptitious sale and disposition of the "Quantico" plantation, and to state and set forth the terms, nature, and character of such agreement, and, if in writing, to set forth the same fully.

Second. Whether or not and at whose instigation, by what au-

thority or at whose instance, the said J. Madison Wells, Junior, is proceeding to do the acts hereinbefore charged against him, and whether or not the same is not being done at the instance, suggestion, and instigation of the said The State National Bank of
70 the City of New Orleans, through some of its officers, agents, or attorneys, and, if so, whom, or whether or not one J. Madison Wells, a former keeper of the said plantation, under proceedings formerly instituted by the defendants, David Urquhart and the State National Bank of the City of New Orleans, at the instance and instigation of said defendants or some one of them, and which, is not advising, aiding, and assisting the said J. Madison Wells, Junior, in the consummation of the acts herein charged against the said J. Madison Wells, Junior, for the benefit and advantage of the said defendants, David Urquhart and The State National Bank of the City of New Orleans, to deprive this court of its jurisdiction of this cause and to defeat the complainants of their rights and claims set forth in said bill of complaint, and especially to deprive the said Marie P. Evans of her just rights over the said "Quantico" plantation as the only recognized and admitted sole heir and universal legatee of the said Stephen D. Linton, and to deprive the complainants of the benefits and advantages of such decree as may be granted under the original bill of complaint in this cause.

Third. Whether or not, and when, it is or was the intention
71 and purpose of the said J. Madison Wells, Junior, to sell and dispose of the said "Quantico" plantation, and whether or not any notice was ever given to the said complainants or either of them, and when and how made or given, of such purpose or intention, and whether or not it was not understood, agreed by and between the said J. Madison Wells, Junior, and the said other defendants, and which of them, that the said acts and proceedings of the said J. Madison Wells, Junior, were to be kept from the said complainants and the said complainants were to be kept in ignorance thereof, and set forth fully all agreements, arrangements, and understanding made or had relative to the matters inquired of in this interrogatory.

Fourth. Whether or not the said J. Madison Wells, Junior, did not, and, if so, at what time and when and how, have full knowledge of the fact that the said Marie P. Evans was declared, by a court of competent authority and jurisdiction — the parish of Rapides, the sole heir and universal legatee of Stephen D. Linton, the former
72 owner and proprietor of the said "Quantico" plantation, and whether or not the said J. Madison Wells, Junior, contradictorily with the said Marie P. Evans, was not declared not to be entitled to the control of the estate of the said Stephen D. Linton, and whether or not after the same was so declared the said J. Madison Wells, Junior, at the instigation of the said defendants or one of them, and, if so, which, did not surreptitiously proceed to obtain possession of the said property and estate for the purposes charged in this supplemental bill of complaint.

And that your oratrix and orator may have the full benefit of the said suit and proceedings therein against the said J. Madison Wells,

Junior, and may have the same relief against him as your oratrix and orator might or could have had against the said David Urquhart and the State National Bank of the city of New Orleans, or that your oratrix and orator may have such further and other relief in the premises as to your honors shall seem meet.

And that your oratrix and orator may have a further decree against all the defendants in the original suit and this supplemental bill declaring the said Marie P. Evans the sole heir and universal legatee of the said Stephen D. Linton under the will and
73 testament of the said Stephen D. Linton as probated under the authority of the court in the parish of Rapides, as stated in the original bill of complaint, as will appear from the duly authenticated copy of the proceedings of said court to be produced or under the original will of the said Stephen D. Linton as this court may order and direct; also a decree declaring the said Marie P. Linton entitled to administer the estate of the said Stephen D. Linton under the authority aforesaid or under the said will of the said Stephen D. Linton, and declaring the said Marie P. Evans entitled to the full, free, and undisputed possession and control of the said "Quantico" plantation as the lawful owner and possessor thereof without the interference, hindrance, or interruption thereof of the said defendants or either of them, and to the rents, issues, and profits thereof, and to exercise full and complete power and authority over the said "Quantico" plantation without molestation of or from the said defendants or either of them, and for such further decree, redress, and relief as these complainants may be entitled to have in the premises and as to your honors shall seem meet
74 and be agreeable to equity and good conscience.

May it please your honors to grant unto your oratrix and orator the most gracious writ of subpœna of the United States of America, to be directed to the said defendants and each of them, and especially to the defendant J. Madison Wells, Junior, and the rest of the confederates when discovered, thereby commanding them and every of them, at a certain day and under a certain penalty therein to be specified, personally to be and appear before your honors in this honorable court and then and there to answer all and singular the premises and to stand to, perform, and abide such order and decree therein as to your honors shall seem meet.

May it please your honors to grant to your oratrix and orator the most gracious writ of injunction of the United States of America, issuing out of and under the seal of this honorable court, to be directed to the defendant J. Madison Wells, Junior, to restrain him and all persons acting under him or under his direction or authority, his attorneys, agents, or officers, and especially —— Paul, sheriff of the parish of Rapides, to restrain him or them or any or either of them from interferring with the authority or possession of the
75 said Marie P. Evans, as the sole heir and universal legatee of the said Stephen D. Linton, and of her possession and control as such over the said "Quantico" plantation and her rights as such heir and universal legatee, and to restrain him and them or either of them from proceeding to sell or dispose of the said "Quantico"

plantation or any part or portion thereof or from selling or disposing of said plantation or any part or portion thereof or from doing other act infringing upon or interferring with the rights of the said Marie P. Evans, as such sole heir and universal legatee of the said Stephen D. Linton, in respect to the said "Quantico" plantation.

And your oratrix and orator will ever pray, &c.

(Signed) MARIE P. EVANS.

(Signed) WILLIAM H. HUNT,
" R. H. SHANNON,
Solicitors for Comp'ts.

UNITED STATES OF AMERICA,
District of Louisiana, City of New Orleans, } ss:

Marie P. Evans, one of the complainants in the foregoing supplemental bill of complaint, being duly sworn, says that she is one of the complainants in the foregoing supplemental bill of complaint named; that she has heard read the same and knows the contents thereof, and that the same is true of her own knowledge except as to those matters which are therein stated to be information and belief, and as to those matters she believes it to be true.

(Signed) MARIE P. EVANS.

Subscribed and sworn to before me this 2nd day of June, A. D. 1876.

(Signed) J. W. GURLEY,
Comm'r U. S. Circuit Court, Dist. La.

76 *Injunction Order. Filed 3rd June,* 1876.

MARIE P. EVANS and WILLIAM R. EVANS, Complainants,
vs.
DAVID URQUHART, THE STATE NATIONAL Bank of the City of New Orleans, & J. Madison Wells, Junior, Defendants.
} No. 7672. In Equity.

On the supplemental complaint, duly verified, in the above-entitled action, and on filing the same, & upon motion of William H. Hunt and R. H. Shannon, solicitors for the complainants, it is ordered that a preliminary injunction issue against the defendant J. Madison Wells, Junior, and —— Paul, the sheriff of the parish of Rapides, and all other persons acting under them in the matters set forth in the said supplemental bill of complaint; and, sufficient reason appearing why such motion should be granted, it is hereby ordered that until the further order of this court the said defendant, J. Madison Wells, Junior, and —— Paul, sheriff of the parish of Rapides, desist and refrain from interferring with the authority and possession of Marie P. Evans, one of the complainants in this suit, as the sole heir and universal legatee of Stephen D. Linton, deceased, or of her pos-

session and control as such over the "Quantico" plantation and her rights as such heir and universal legatee, as set forth in the original complaint in this cause, and also to desist and refrain
77 from proceeding to sell and dispose of the said "Quantico" plantation or any part or portion thereof or from doing any other acts injurious to or interfering with the rights of the said Marie P. Evans as the sole heir and universal legatee of the said Stephen D. Linton in respect to the said "Quantico" plantation until the further order of this court.

And on such complaint and other documents which may be produced by the complainants in this cause let the defendants or their solicitors, and more especially the defendant J. Madison Wells, Junior, show cause before this court, in the Custom-House building, in the city of New Orleans, on the third Monday of November, A. D. 1876, at the opening of this court on that day, or as soon thereafter as counsel can be heard, why the foregoing order and the injunction hereby issued or some order to be made of like purport and effect should not be continued in full force and until the final judgment and decree be made in this action, and until the foregoing order is modified let the same be and remain in full force and effect.

Allowed.

(Signed) EDWARD C. BILLINGS, *Judge.*

Dated New Orleans, June 3rd, 1876.

It is further ordered that nothing in this order shall be so construed as to authorize or permit any interference by the complainants or the officers of this court with the possession or control of the Quantico plantation as it existed at the date of the instituting this suit, Jan'y 11th, 1876, until the further order of this court.

(Signed) EDWARD C. BILLINGS, *Judge.*

Dated New Orleans, June 10th, 1876.

78 *Pleas Continued.*

Extract from the Minutes, April Term, 1876.

MARIE P. EVANS *et als.*
vs.
DAVID URQUHART *et als.* } No. 7672.

JUNE 5TH, 1876.

On motion of J. McConnell and B. F. Jonas, Esqrs., ordered that the hearing in the pleas be continued till the next term of the court.

79 *Motion & Order to Withdraw Exhibits. Filed 10th June*, 1876.

MARIE P. EVANS and HUSBAND
vs.
THE LA. STATE BANK *et al.*
No. 7672. In Equity.

On motion of W. H. Hunt & R. H. Shannon, complainants' solicitors, it is ordered that they have leave to withdraw from the record the exhibits filed with defendants' answer.

80 *Appearance of J. Madison Wells, Junior. Entered 3rd July*, 1876.

MARIE P. EVANS & W. R. EVANS
vs.
DAVID URQUHART *et al.*
No. 7672. In Equity.

In this case J. Madison Wells, Junior, comes, by his solicitors, Merrick, Race & Foster, and enters his appearance as a defendant in the above-entitled cause.

81 *Notice of Application for Receiver, etc. Filed 21st July*, 1876.

MARIE P. EVANS *et al.*
vs.
DAVID URQUHART *et al.*
No. 7672. In Equity.

Notice is hereby given to the said defendants, David Urquhart, The State National Bank of New Orleans, and J. Madison Wells, Jr., that said complainants will, on the 8th day of August, 1876, or as soon thereafter as counsel can be heard, at New Haven, in the State of Connecticut, apply to his honor E. C. Billings, judge, etc., for leave to file their amended and supplemental bill of complaint in this cause, and will at the same time apply for the appointment of a receiver to take and hold said Quantico plantation in said bill of complaint mentioned.

New Orleans, July 21st, 1876.

(Signed) J. D. ROUSE,
Of Counsel for Comp'ts.

82 *Plea of J. Madison Wells, Jr. Filed 7th Aug.*, 1876.

MARIE P. EVANS *et al.*
vs.
D. URQUHART *et al.*
No. 7672.

The plea of J. Madison Wells, Jr., to the bill and supplemental bill of complaint of Marie P. Evans *et al.*, complainants.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainants' bill

and supplemental bill of complaint mentioned and contained to be true in such sort, manner, and form as the same are therein set forth and alleged and for plea to the whole of said bill and supplemental bill, saith that this hon. court hath not jurisdiction and cannot take jurisdiction over the said Quantico plantation and over the matters and things alleged in said original and supplemental bills, for this, that on or about the 11th day of March, 1868, the succession of Stephen D. Linton, dec'd, was opened in the parish of Rapides, where the deceased left landed property, the said suit bearing No. 1171;

and inventories of the estate were taken, including said Quan-
83 tico plantation, and John H. Randell was appointed provisional curator and guardian of the estate; that on or about the 17th day of March, 1871, Orestes K. Hawley, public administrator, was appointed administrator, and by virtue of his office lawfully took possession of the property under the authority of the parish court of the said parish of Rapides and proceeded to administer the estate of said deceased, and, among other things, on or about the third day of May, 1871, filed a tableau of debts showing debts to the amount of $121,046.66⅔, besides large accumulations of interest, which debts greatly exceed the assets of the estate, including said plantation; and said estate of said Stephen D. Linton was then and still is largely insolvent; that the said plantation having been irregularly sold by the Louisiana State Bank in some proceeding in court, said Hawley brought suit and this defendant, as his successor in office, had said plantation brought back into the said succession by a decree of the competent court, which decree was affirmed by the supreme court of Louisiana, in the suit entitled Hawley *vs.* Hyman and Robinson, about the month of March, 1876; that said Hawley

84 having resigned, this defendant, as public administrator, as well as by the decree of the parish court, succeeded, on or about the 7th day of July, 1873, in the place of said Hawley, as administrator of said succession, and became and was seized and possessed of the said plantation, the real estate, effects, and assets of said succession under the authority of said parish court, and was and is still administering the same by virtue of the said authority and in possession thereof, and that said parish court by law is the only court which has jurisdiction over said assets until they are formally administered upon and the *and the* numerous and large creditors of the succession are paid as far as the said assets will go; that the said pretended order of the said parish court of (on or about) the 25th day of May, 1875, under which said complainant claims, was absolutely null and void and conferred no right upon her for this, that no suit was brought against this administrator or any one else to demand the estate and the pretended universal legacy, and said pretended order was obtained without citation and notice to this

85 defendant and was entirely *ex parte*, and no money tendered to this administrator to pay the debts, whereby said pretended order was absolutely null and void; and thereupon and as soon as the same was known (and long before the commencement of this suit in this hon. court), to wit, on or about the 28th day of July, 1875, this defendant, in his said capacity of administrator of said

succession of said Linton, filed a petition in said parish court against the said complainant to cause said illegal and void order for the putting of said complainant in possession of said Linton's estate to be rescinded, annulled, and cancelled, which said last-mentioned suit is still pending and undetermined in the State court; that said original bill of complaint in this case was not filed until January 11th, 1876, long after said parish and probate court of the parish of Rapides was seized of jurisdiction over the succession of said Stephen D. Linton, dec'd, and all the effects thereof in the said parish and in the State of Louisiana, and over said suit against said complainant to cause said illegal and void *ex parte* order to be cancelled and rescinded, and that this suit in equity has been commenced
86 in this court for the illegal purpose of defeating the rights of the creditors and of ousting the lawful jurisdiction of said parish court of Rapides parish over the settlement of the succession of said Stephen D. Linton, deceased, and over said suit pending against complainant, which said parish court alone is the only court which has jurisdiction over the assetts of said succession and the settlement of the estate and payment of creditors, and this defendant is still in possession and administering the said assetts of the succession under the authority of said parish court, and his said possession has never been ousted by said pretended *ex parte* void order or otherwise, and this court is without jurisdiction over said matters.

Therefore this defendant doth plead the said want of jurisdiction in this hon. court to said complainants' original and supplemental bill of complaint and each and every part thereof, and prays the judgment of this hon. court whether he should be compelled
87 to make any further answer to the said bills, and prays to be hence dismissed with his reasonable costs and charges in that behalf most wrongfully sustained.

(Signed) MERRICK, RACE & FOSTER,
Sol's for J. Madison Wells, Jr.

I hereby certify that in my opinion the foregoing plea is well founded in law.

(Signed) E. T. MERRICK, *Counsel.*

I, Edwin T. Merrick, being duly sworn, on oath say that the within plea is not interposed for delay.

(Signed) E. T. MERRICK.

Sworn to and subscribed before me this 7th Aug., 1876.

(Signed) F. B. VINOT,
U. S. Commissioner.

88 *Appearance of J. M. Wells, Adm'r. Entered 4th December*, 1876.

MARIE P. EVANS *et al.*
vs.
D. URQUHART *et al.* } No. 7672. In Equity.

The defendant, J. M. Wells, administrator, comes, by Merrick,

Race & Foster, his solicitors, and enters an appearance to the supplemental bill in this case.

89 *Replication to Plea, &c., of J. Madison Wells, Jr. Filed 18th December*, 1876.

MARIE P. EVANS and WM. R. EVANS, Complainants,
vs.
THE STATE NATIONAL BANK and DAVID URQUHART, Defendants.
No. 7672. In Equity.

The replication of Marie P. Evans and William R. Evans, complainants, to the plea, &c., of J. Madison Wells, Junior, one of the defendants in the above-entitled cause.

These repliants, saving and reserving unto themselves all and all manner of advantage to the manifold insufficiencies of the said plea, for replication thereto say that they will aver and prove their said bill and supplemental bill to be true, certain, and sufficient in law to be answered unto, and that the said plea of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said plea contained material or effectual in the law to
90 be replied unto, confessed and avoided, traversed or denied, is true.

All which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and by their said bill and supplemental bill they have already prayed.

(Signed) W. H. HUNT,
(Signed) R. H. SHANNON,
Solicitors for Compl's.

91 *Motion. Filed 15th January*, 1877.

MARIE P. EVANS & HER HUSBAND
vs.
D. URQUHART *et* —.
No. 7672. In Equity.

On motion of J. McConnell, solicitor for State National Bank, one of the defendants herein—

It is ordered by the court that the said defendant have ten days further time in which to prepare & file a plea to the supplemental bill and supplemental plea to the original bill of complaint herein.

92 *Motion for Leave to Withdraw. Filed 18th January*, 1877.

MARIE P. EVANS *et al.*
vs.
STATE NATIONAL BANK *et al.*
No. 7672. In Equity.

On motion of Merrick, Race & Foster, of counsel for the defendant

J. M. Wells, Jr., dative testamentary executor, one of the defendants, and on suggesting to the court that in the replication on file objection is made to the manner in which the transcript of the probate proceedings on file and intended to be used as evidence on the trial of the pleas is certified, it is ordered that said defendant or any of the defendants have leave to withdraw said transcript of said probate proceedings and to send the same to Alexandria by mail or express for further authentication, party or his counsel to leave receipt with the clerk for said transcript.

93 *Motion. Filed 24th January*, 1877.

MARIE P. EVANS & HER HUSBAND
vs.
D. URQUHART *et al.*
} No. 7672. In Equity.

On motion of J. McConnell, solicitor for The State National Bank, one of the defendants herein, ordered that he have twenty days additional time in which to prepare & file a plea to the supplemental bill & supplemental plea to the original bill of complainants herein.

94 *Motion. Filed 1st March*, 1877.

MARIE P. EVANS & HER HUSBAND
vs.
D. URQUHART *et al.*
} No. 7672. In Equity.

On motion of J. McConnell, solicitor for The State National Bank, one of the defendants herein, it is ordered that the time granted in the motion herein filed on 24th January, 1877, be extended to Monday, the 5th of March, 1877, for filing the plea to the supplemental bill and supplemental plea to the original bill of complainants herein.

95 *Plea of the State National Bank to Bill and Supplemental Bill. Filed 3rd March*, 1877.

MARIE P. EVANS and W. R. EVANS, Her Husband,
vs.
DAVID URQUHART and THE STATE NATIONAL BANK OF NEW ORLEANS.
} No. 7672. In Equity.

The plea of the State National Bank of New Orleans to the original and supplemental bill of complaint of Marie P. Evans and her husband, William R. Evans, complainants.

This defendant, by protestation, not confessing or acknowledging the matters and things by said bill and supplemental bill set forth and alleged to be true in such manner and form as the same are thereby and therein set forth and alleged, for plea to the whole of said bill and supplemental bill and to all of the discovery and re-

lief sought and prayed for thereby doth plead thereunto, and for cause of plea says—

That said Stephen D. Linton, named in complainants' bill and supplemental bill, died, as averred in said bill, in the city of Paris,
France, on or about the 15th day of December, A. D. 1867,
96 and this defendant avers his succession was duly opened in
the proper court of the parish of Rapides, State of Louisiana, on the 11th of March, A. D. 1868, as suit No. 1171, of the docket of said court, on which day a petition was filed in said court by Coleman D. Calvit, setting forth the death as aforesaid of the said Linton, and alleging that he died intestate and left property and effects in said parish of Rapides, and also a large number of creditors in this State, and that an administration was necessary, and praying that said Calvit should be appointed curator of said succession, and that an inventory and appraisement of the effects of said succession should be made according to law; that upon notice being given of said application an opposition was filed thereunto by Jules A. Blanc, president of the Louisiana State Bank, alleging that said bank was a large creditor of said succession, and that said Calvit was not a creditor thereof, and praying that said Blanc should be appointed curator of said succession in preference to said Calvit. Now this defendant further says that afterwards, to wit, on the 8th of October, 1868, on the application of said Blanc, the said court appointed
John H. Ransdell provisional curator and guardian of the
97 property of said succession, and ordered him to be put
into possession of the same, and that he was so put into possession; that subsequently, on the 17th of December, 1868, on the petition ot the Louisiana State Bank and others, claiming to be creditors of said succession, an inventory of the property of the succession was taken by order of the court and duly returned and filed in the mortuary proceedings, from which it appears that the entire assets of said succession were appraised at the value of seventeen thousand one hundred dollars.

And this defendant further says that other proceedings were thereafter had in the matter of the administration of said succession before the said court not material to be specifically set forth here; that on the 14th of September, 1870, a petition was filed therein by Orestes K. Hawley, public administrator of said parish of Rapides, setting forth that said succession was a vacant one, and that there was a contest then pending in said court for the curatorship thereof, and
praying that he, the said Hawley, be appointed administrator
98 thereof, as provided by law, and that he be put in possession
of the property and effects of said succession and for an inventory to be taken, and thereupon he was so appointed and put into possession and an inventory taken on the 20th of September, 1870, and duly returned and filed, and that from said inventory it appears that the entire assets of said succession were appraised at the value of twenty-seven thousand six hundred dollars.

And this defendant says that subsequently, to wit, on the 3rd of May, 1871, the said administrator filed a tableau of debts, acknowledged to be due by said succession, amounting, in principal, to the

sum of $121,046.66⅔, with a large amount of interest thereon, of which amount the sum of $86,666.66⅔, with large arrearages of interest, is set forth as due by said succession to the Louisiana State Bank.

And this defendant says that from said inventories and appraisements and said tableau of debts it appears that said succession was and is heavily insolvent, and that there was and
99 would be nothing coming from it to any heir of said Stephen D. Linton, testamentary or at law; which appearance of utter insolvency of said succession this defendant avers was and is in accordance with the truth of the matter.

And this defendant says that from the time of the filing of said tableau of debts as aforesaid, on the 3rd of May, 1871, various proceedings were had in said court in due course of administration of said succession, not necessary to be specifically set forth here, till the 9th of January, 1872, when a petition was filed in said mortuary proceedings by Mary P. Linton and Charlotte P. Linton, Widow Surget, claiming, as sisters of said Stephen D. Linton, to be his sole heirs at law and praying to be recognized as such and to be allowed to accept said succession with benefit of inventory, and also praying that the appointment of the public administrator to administer upon said succession should be vacated, and that their attorney, T. C. Manning, whom they had specially appointed to represent
100 them by procuration duly executed, should take charge of said succession in their name.

And this defendant further says that after due proceedings had in said court upon said petition of the said sisters of said Linton a final judgment was rendered against them on the 30th of January, 1875, which judgment was subsequently affirmed by the supreme court of Louisiana.

And this defendant further says that pending the proceedings as aforesaid upon the said petition of the said sisters of said Linton, J. Madison Wells, Jr., was appointed public administrator for the parish of Rapides, vice said O. K. Hawley, and became party in his stead to said mortuary proceedings on the 7th of July, 1873, and succeeded said Hawley in the possession and administration of the property and assets of said succession.

All of which matters connected with said mortuary proceedings will more fully and at large appear, reference being had thereto, from a duly certified copy thereof, herewith filed as Exhibit A.

And this defendant further says that while the said Wells
101 was, as aforesaid, in actual possession and administration of said succession, to wit, on the 25th day of May, 1875, a certain paper, dated at Matamoras in the year 1863, was upon the petition of Henry Perkins, probated as the last will of said Stephen D. Linton before H. L. Daigre, parish judge of the parish of Rapides, whereby his wife, Mary Linton, is constituted the sole and exclusive inheritor of any property he may leave at the time of his death, which proceedings, this defendant avers, were entirely *ex parte*, in so far as the said public administrator, then in the actual possession and administration of said succession, was concerned.

And this defendant further says that on the petition of the said Mary Linton and of her husband by second marriage, William R. Evans, *ex parte*, and without notice or citation to said public administrator, then in the actual possession and administration of said succession, a judgment was rendered by said H. L. Daigre, parish judge, ordering the said Marie P. Evans as universal legatee
102 to be put in possession of the effects of said succession, which judgment was rendered on the 13th of July, 1875.

And this defendant says that it is advised that the said judgment, so rendered *ex parte* and without notice or citation, was absolutely null, void, and inoperative.

And this defendant avers that said Marie P. Evans never was put in possession of any of the property or assetts of said succession under said judgment, but that said Wells, as public administrator appointed to administer said estate by said court, and as dative testamentary executor of said Stephen D. Linton's last will, as hereinafter set forth, has remained and is now in possession of and is actually administering upon said estate.

And this defendant further says that on the 9th of February, 1876, the said J. M. Wells, Jr., filed in the said parish court of the parish of Rapides a petition representing that since his appointment as administrator of the succession of the said Stephen D. Linton a will had been propounded and probated in the records of said
103 court and ordered to be executed, and that petitioner, as public administrator, was entitled, under the law of Louisiana, in preference to all others, to be appointed dative testamentary executor of said will, and praying that after due proceedings he be so appointed; and this defendant says that thereupon and after due proceedings were had the said Wells was, by judgment of said court rendered on the 15th of March, 1876, duly appointed dative executor of said last will, and that he has qualified as such and is now in the actual possession and administration of said succession in said capacity; all of which, reference being had thereto, will more fully and at large appear from a duly certified copy of said proceedings in said court, No. 248 of its docket, herewith filed as Exhibit B.

And this defendant further says that on or about the 17th day of May, 1876, the said J. Madison Wells, Jr., in his said capacity of dative testamentary executor, filed in the said parish court of the parish of Rapides a petition wherein he set forth that the
104 said Marie P. Evans and her husband, Wm. R. Evans, had on the day previous, to wit, the 16th of May, 1876, filed a petition in said court praying for a writ of possession to put them in possession of the property of said succession under the said pretended judgment of said court of the 13th of July, 1875, and that the court, upon the filing of said petition and before citation, had rendered judgment ordering that a writ of possession issue as prayed for; that said petition of said Wells, dative executor, further set forth that the said judgment of the 13th of July, 1875, ordering the said Marie P. Evans to be put in possession of said succession as universal legatee, and the said order of May the 16th, 1876, award-

'ing a writ of possession thereunder, were absolute nullities and void, and praying the court, after due proceedings, so to decree, and in the meantime a writ of injunction to restrain the threatened enforcement of said void judgment was prayed for and granted by the court.

And this defendant further says that thereafter, upon due
105 proceedings had, contradictorily with the said Marie P. Evans and her said husband, the said court, on the 24th day of October, 1876, formally adjudged that the judgment of said court of the 13th of July, 1875, recognizing the said Mrs. Marie P. Evans as universal legatee, and ordering her as such to be put into possession of the succession of said Stephen D. Linton, be declared null and void, & that the injunction to restrain the enforcement of said judgment be perpetuated.

All of which, reference being had thereto, will more fully and at large appear from a duly certified transcript of the proceedings of said court in said matter, herewith filed as Exhibit C.

Now, this defendant says that by reason of the premises the complainant, Marie P. Evans, is not entitled to call upon this defendant in this court for the discovery and relief prayed for in her bill and supplemental bill or any part or portion thereof, as this de-
106 fendant, if answerable at all in the premises, which it does not admit, but expressly denies, is accountable, pending administration of said estate of Stephen D. Linton, only to the said dative testamentary executor, in possession and actual administration of said estate, and not to the said complainant, Marie P. Evans, whose claim is wholly that of a residuary legatee.

All of which matters and things this defendant doth aver to be true and pleads the same to the whole of said bill and supplemental bill, and prays the judgment of the court whether it behooves said defendant to make any further answer thereto than as aforesaid, and prays to be hence dismissed with reasonable costs and charges in this behalf sustained.

I, J. McConnell, solicitor for the State National Bank, hereby certify that the foregoing pleas are, in my opinion, well founded
107 in point of law.

(Signed) J. McCONNELL, *Solicitor.*

Samuel H. Kennedy, being first duly sworn, deposes that he is the president of the State National Bank of New Orleans and one of the defendants herein; that the foregoing pleas are not interposed for delay; and further says that the facts set forth in the foregoing pleas are true to the best of affiant's knowledge, information, and belief.

(Signed) SAM'L H. KENNEDY.

Sworn to & subscribed at New Orleans this 1st day of March, 1877, before me—

[SEAL.] (Signed) J. G. EUSTIS,
U. S. Commissioner for the Dis'ct of La.

108 *Replication to Pleas. Filed 22nd May, 1877.*

MARIE P. EVANS *et al.*
vs.
DAVID URQUHART *et al.* } No. 7672. In Equity.

Replication of said plaintiffs to the said several pleas by said defendants pleaded to said bill and amended and supplemental bill of complaint of said complainants.

These repliants, saving and reserving unto themselves all and all manner of exception to the manifold insufficiencies of the said several pleas, for replication thereunto say that they will aver and prove said bill to be true, certain, and sufficient in law to be answered unto, and that said several pleas of said defendants are each and all respectively uncertain, untrue, and insufficient to be replied unto by these replicants; without this, that any other matter or thing whatsoever in said several pleas or any of them contained material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants *and* will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and — said bill they have already prayed.

(Signed) J. R. BECKWITH,
Sol'r and Counsel for Comp't.

109 Extract from parish court. Filed 31st August, 1877.

Extracts from the minutes of the parish court.
Alexandria, Louisiana, August 20th, 1877.
See page — of this record.

110 *Order. Filed 13th December, 1877.*

M. P. EVANS & W. R. EVANS
vs.
THE STATE NATIONAL BANK. } No. 7672. In Equity.

On motion of Merrick, Race & Foster, and on suggesting to the court that J. M. Wells, ex'r., has been and was delayed in taking testimony under his plea by a supposed compromise of the case, it is ordered that said Wells have until the rule day in February, 1878, to complete taking said testimony.

111 *Amendment to Plea of J. M. Wells, Jr. Filed 29th December, 1877.*

MARIE P. EVANS *et al.*, Complainants,
vs.
DAVID URQUHART *et al.* } No. 7672. In Equity.

Leave of the court being first had and obtained, the defendant James M. Wells, Jr., comes and amends his plea by correcting and

amending the same as follows, viz: By inserting after the words "the same," on the 9th line of the 41st page of said plea, the following, viz: "Now as dative testamentary executor of the will of said S. D. Linton, dec'd, under an appointment made on the 15th day of March, 1876," and by striking out the words "of administrator," interlined between the fourteenth and fifteenth lines of the fifth page, and inserting the words "dative testamentary executor" in the place thereof, and by adding after the words "said matters," on the ninth line of the seventh page of said plea the words "and this defendant refers to the transcript filed in this case on the 3rd day of March, 1877, and the one marked 'No. 248' as exhibits and for greater certainty."

112 E. T. Merrick, being first duly sworn, on oath says that the error made in the plea in not mentioning the capacity of said Wells as dative testamentary executor arose from the fact, he was informed, that both Hawley and Wells had acted as public administrator; that the two documents referred to as exhibits have been obtained, as he thinks, since he made the mistake, and that the delay in preparing for trial on this plea has been from an understanding that the case had been compromised.

(Signed) W. T. MERRICK.

Sworn to and subscribed in open court this 29 day of December, A. D. 1877.

(Signed) N. LOEW,
Com. Circuit Court, La.

113 *Amendments Allowed. Filed 29th December*, 1877.

MARIE P. EVANS *et al.*
vs.
D. URQUHART *et al.* } No. 7672. In Equity.

On motion of Merrick, Race & Foster, of counsel for the defendant J. M. Wells, Jr., and on consideration of the affidavit filed therewith, it is ordered that the amendments proposed to the plea be allowed; and said plea of said Wells is hereby amended accordingly.

114 *Order Appointing a Commissioner. Filed 29th December*, 1877.

MARIE P. EVANS *et al.*
vs.
D. URQUHART *et al.* } No. 7672. In Equity.

On motion of Merrick, Race & Foster, of counsel of J. M. Wells, Jr., dative testamentary executor of the last will and testament of Stephen Duncan Linton, deceased, it is ordered that F. A. Woofley, Esq., be appointed a commissioner to take the testimony in this case on the issue made upon the plea of the said defendant as amended.

(Signed) EDWARD C. BILLINGS, *Judge.*

115 *Notice to Take Testimony Orally. Filed 31st December*, 1877.

MARIE P. EVANS *et al.*
vs.
D. URQUHART *et al.* } No. 7672. In Equity.

To J. R. Beckwith, Esq., counsel for complainants.

SIR: Take notice that the defendant, James M. Wells, Jr., dative testamentary executor of the last will and testament of S. D. Linton, dec'd, desires to take orally the evidence which shall be adduced in this city on the plea in this case, but without prejudice to testimony taken or to be taken under interrogatories in other parishes.

(Signed) By MERRICK, RACE & FOSTER,
Sol's for J. M. Wells, Jr., Dat. Test. Ex'r.

A. H. Wilson, being first duly sworn, says that on Saturday, December 29th, 1877, he served a copy of the within notice on J. R. Beckwith, Esq., by delivering the same to him in person in his office, at No. 9 Carondelet St.

(Signed) A. H. WILSON.

Sworn to & subscribed before me this 31 Dec., 1877.

(Signed) F. B. VINOT,
U. S. Comm'r.

116 *Order Extending Time, &c. Filed 16th Jan'y*, 1878.

MARIE P. EVANS *et al.*
vs.
DAVID URQUHART *et al.* } No. 7672. In Equity.

In this case, on motion of Merrick, Race & Foster, of counsel for Wells, executor, suggesting that the complainant desires that some present delay should be accorded her, she being about to retain further counsel, and by consent it is ordered that the time for the taking of testimony on the issues in this case be extended to the first rule day in March, 1878.

I consent.

(Signed) J. R. BECKWITH,
Sol. for Comp'ts.

117 *Notice. Filed 28th February*, 1878.

MARIE P. EVANS & Her Husband, WILLIAM R. EVANS,
vs.
DAVID URQUHART *et al.* } No. 7672. In Equity.

To James McConnell & Mess. Merrick, Race & Foster, solicitors for defendants in the above entitled action.

GENTS: You will respectively take notice that on Wednesday, the 6th day of March, A. D. 1878, at eleven o'clock a. m., or as soon

thereafter as counsel can be heard, the complainants in the above-entitled action will apply to the judges of the circuit court of the United States for the district of Louisiana, at the court-room, in the custom-house, in New Orleans, by petitioners for leave to file a supplemental bill of complaint herein, of which you will please take notice.

(Signed) J. R. BECKWITH,
Sol. for Comp'ts.

DISTRICT OF LOUISIANA, *ss:*

J. B. Murtagh, being first duly sworn, deposeth and saith that *that* on the 27th day of Febr'y, A. D. 1878, he served the within notice on the solicitors for defendants therein named by delivering a copy thereof to E. T. Merrick, Esq., of the firm of Merrick,
118 Race and Foster, at their office, in New Orleans, and on the said James McConnell by leaving a copy thereof in his office, in the city of New Orleans, in the hands of Horace Upton, also a person of full age and who also occupied the same office, and explained the contents thereof and requested him to hand the same to the said McConnell; and further deponent saith not.

(Signed) J. B. MURTAGH.

Sworn to & subscribed before me this 28th day of Feb'y, 1878.
(Signed) CHAS. L. RICE,
[SEAL.] *U. S. Comm'r.*

Petition for Supplemental Bill. Filed 28th Feb'y, 1878.

MARIE P. EVANS & Her Husband, WILLIAM R. EVANS,
vs.
DAVID URQUHART *et al.*
} No. 7672. In Equity.

To the hon. the judges of the circuit court of the United States for the district of Louisiana:

The petition of Marie P. Evans and William R. Evans, her husband, plaintiffs in the original bill herein, respectfully show- unto your honors that since they exhibited and filed their said former bills in this cause events have happened which make it nec-
119 essary, in order that full justice shall be rendered by the court in and about the premises set forth in said bills, that your petitioners should be allowed to file and exhibit herein her supplemental bill in this cause; that your petitioners have discovered since the filing of their former bills herein that in order to obtain full and complete discovery and relief in the premises that it is necessary and indispensable to make other parties codefendants in said proceedings; that it is important and necessary that J. Madison Wells, Senior, and the widow and heirs of J. M. Lepeyare should be made defendants herein; and, further, that they have discovered since the date of said former bills additional facts, consisting of acts of the said defendants which it is important and necessary should

be set forth and averred in order that they should obtain full discovery and relief in the premises; that they have so discovered that the defendants have and hold in their possession of the property of Stephen D. Linton and belonging to his succession the proceeds of a large number of bales of cotton, amounting, as they be-
120 lieve, to the full number of 1,800 bales; that all of the documents, account of sales, and written proof of the manner in which said cotton was disposed of and the amount realized therefrom are in the possession of the said defendants, and that justice will be defeated and wrong done your petitioners unless the said facts are set forth in due and proper form herein with appropriate prayer for discovery and relief.

And your petitioners further show that since the filing and exhibition of her said former bill of complaint herein she has come into the possession of and has caused to be probated a last will and testament of the said Stephen D. Linton of a subsequent date to the one averred and set forth in the said former bill, where, although no change has been made in the disposition of the estate of the said deceased, your petitioner, Marie P. Evans, has been and is made and appointed testamentary executrix of said last will and testament and constituted universal legatee of the succession of the said deceased; that by due proceedings had in the parish court for the parish of Rapides said will has been duly probated
121 and your petitioner confirmed as testamentary executrix of the said last will and testament of the said deceased; all of which your petitioners are advised and informed it is material, necessary, and proper that they should disclose and set forth in a supplemental bill of complaint.

And your petitioners further show that said defendants, The State National Bank of New Orleans, since the date of the said probate of said last will of the said Linton have resorted to proceedings which they are advised are wrongfully dishonest and unjust and calculated and intended wrongfully to hinder and obstruct your petitioners in obtaining full and complete redress and crush and estray the rights of your petitioners; that they are advised and informed that it is material and necessary that the notice of such illegal wrongful acts and devices should be made known to the court in order that your honors may stay the hands of the said defendants in their act of wrong and prevent the defeat of justice and the administra-
122 tion thereof from being brought into contempt and disgrace.

Wherefore your petitioners pray that they be allowed leave to file their supplemental bill herein in that behalf, and will ever pray, &c.

(Signed) J. R. BECKWITH,
Sol'r for Compl's.

DISTRICT OF LOUISIANA, *ss:*

Marie P. Evans, one of above-named petitioners, being first duly sworn, saith that she knows the contents of the foregoing petition, and that she verily believes that the matters and allegations therein

contained are true in manner and form as therein set forth; and further saith not.

(Signed) MARIE P. EVANS.

Subscribed & sworn before me, the undersigned authority, this 27th day of February, A. D. 1878.

(Signed) JULES MOSSEY,
[SEAL.] *Notary Public.*

123 *Notice. Filed 7th March*, 1878.

MARIE P. EVANS *et al.*
vs.
DAVID URQUHART *et al.* } No. 7672. In Equity.

To B. F. Jonas, Esq., solicitor for defendants in the above-entitled cause.

SIR: Please take notice that on Saturday, the 9th day of March, A. D. 1878, at eleven o'clock a. m. of said day, or as soon thereafter as counsel can be heard, the complainants will apply to the judges of said court for leave to file a supplemental bill in this court as prayed for in their petition now on file in said court in this cause.

(Signed) J. R. BECKWITH,
Sol. for Compl's.

Dated New Orleans, March 6th, 1878.

PARISH OF ORLEANS,
District of Louisiana, } *ss:*

J. B. Murtagh, being first duly sworn, doth depose and saith that he served a copy of the within notice on B. F. Jonas, Esq., solicitor for David Urquhart, personally, at his office, in the city hall, March 7th, 1878.

(Signed) JAS. B. MURTAGH.

Sworn to and subscribed before me this 7th March, 1878.

(Signed) F. B. VINOT,
U. S. Comm'r.

124 *Supplemental Bill of Complaint. Filed 13th March*, 1878.

MARIE P. EVANS and WILLIAM R. EVANS, Her Husband, Complainants,
vs.
STATE NATIONAL BANK OF NEW ORLEANS, DAVID URQUHART, and J. MADISON WELLS, Jr., Defendants. } No. 7672. In Equity.

To the hon. the judges of the circuit court of the United States for the fifth judicial circuit and district of Louisiana:

Marie P. Evans, of the city of Philadelphia, a citizen of the State of Pennsylvania, and Wm. R. Evans, her husband, also of the city

of Philadelphia and a citizen of the State of Pennsylvania, by leave of the court first had and obtained, brings this her supplemental bill of complaint against said defendants, The State National Bank of New Orleans, a corporation duly created under the laws of the State of Louisiana and existing by authority of the laws of the United States, and domiciled in the city of New Orleans, and against David Urquhart, a citizen of the State of Louisiana, residing in the city of New Orleans, and against J. Madison Wells, Jr., also a citizen of the State of Louisiana and a resident of the parish of
125 Rapides, in said State, defendants in the said complainants' original and supplemental bill herein, and against J. Madison Wells, a citizen of the State of Louisiana, at present residing in the city of New Orleans, and against Angelina Avegno Lapeyre, widow of J. M. Lapeyre, deceased, and tutrix of the minor children, Albert P. Lapeyre, Fernand Lapeyre, Anna Lapeyre, George Lapeyre, and Martial Lapeyre, the said children being the issue of her marriage with the said J. M. Lapeyre, deceased, and the heirs of the said J. M. Lapeyre, deceased, and, with the said Angelina Avegno Lapeyre, the sole heir of the estate and succession of the said J. M. Lapeyre, deceased, all of them residing in the State of Louisiana, in the city of New Orleans, and Louise Lapeyre Gasquet and F. J. Gasquet, also residing at the same place.

And thereupon your oratrix and orator complain and say that heretofore, to wit, on or about the 11th day of January, A. D. 1876, your oratrix and your orator filed and exhibited their said bill of complaint in this court against the said defendant-, The State National Bank of New Orleans and the said David Urquhart, and that subpœnas *ad respondendum* were duly issued under the
126 seal of this court and served upon the said defendant-, and that the said defendants, in due time and according to the commands contained in said writ of subpœna and the rules and law governing this court, appeared in this court herein and filed their several pleas to the said complainants' bill of complaint, and that your oratrix and orator took issue thereon, and your oratrix and orator refer to said original bill of complaint, which is of record in this cause, and repeat the allegations, charges, statements, averments, interrogatories, and prayer thereof, and insist upon the same in all respects as if the same were set forth and averred in their said supplemental bill of complaint.

That afterwards, to wit, on or about the 3rd day of June, A. D. 1876, your oratrix and orator, in due form of law, by leave of the court first had and obtained, did file and exhibit in this court a supplemental bill of complaint against the said defendants named in said original bill of complaint and against the said defendant, J. Madison Wells, Jr., which said supplemental bill of complaint is now of record in this court in this cause; and to the said bill of complaint your oratrix and orator refer and affirm the same in all respects as therein averred and set forth at large and in *ex-*
127 *tenso* herein, and insist upon and urge and affirm all of the allegations, charges, statements, interrogatories, and prayer therein contained and set forth; that process of subpœna, in due

form and according to the usages of this court, sitting in equity, were issued under the seal of this court, directed to the said defendants, and were duly served on them; that in response thereto and in obedience to the commands thereof the said defendants named in said supplemental bill appeared in this court and filed their several pleas herein, which said pleas are of record in this court in this cause, and to which your oratrix and orator refer.

Your oratrix and orator further show unto your honors that your oratrix and orator in due form of law took issue upon said pleas and to the amendments thereof, and that the said issues are as yet pending and undetermined.

Your oratrix and orator further show unto your honors that in substance and in effect the said several pleas of the said defendants averred and set forth that the succession of the said Stephen D. Linton was opened in the parish court of the parish of Rapides, in the State of Louisiana, and that proceedings in said court in
128 said succession were pending in the said parish court, and that the said defendant, J. Madison Wells, Jr., had been by said court appointed in some capacity, either as public administrator or as dative testamentary executor, and that as such he was administering the said succession in the said probate court in the parish of Rapides; that an inventory of the property of the said succession had been taken by order of the court and duly returned and filed in the mortuary proceedings, and that the entire assets of the said succession were appraised at the value of $17,000 or thereabouts.

That it appeared from the inventory and the tableau of debts that said succession was heavily insolvent, and that there would be nothing coming therefrom to any heir, testamentary or otherwise, of the said Stephen D. Linton; that by reason of some supposed interest of the judge of the said parish court in said proceedings, and that as required by law, certain of the proceedings therein were had before the district judge; further, that on or about the 25th day of May, 1875, before the parish judge of the said parish of Rapides, a paper purporting to be the last will and testament of
129 the said Stephen D. Linton in olographic form, whereby his wife, the said Mary Linton, was constituted the sole and exclusive inheritor of all the property of which the said Stephen D. Linton was seized at the time of his death; said will was dated at Matamoras, in the year 1863; that said will was probated as the last will of the said Stephen D. Linton and ordered to be executed by the said court, averring in said plea in substance that said proceedings were irregular and, as they pretended, void and of no effect.

That afterwards and after your oratrix and orator had exhibited against the said defendants their said supplemental bill of complaint, the said defendants appeared in said court and severally pleaded to the said bill and supplemental bill of complaint, averring in substance and effect that the said succession of the said Stephen D. Linton had been opened in the parish court of said parish of Rapides by proceedings therein, which they averred and pretended were in due form, and again setting forth in their said pleas in substance and effect the same averments which had been averred and

set forth in their said pleas to the said original bill of com-
130 plaint, and further averred and set forth that the said defendant, J. Madison Wells, Jr., had filed in the said parish court of the parish of Rapides his said petition, representing that his appointment as administrator of the said succession of the said Stephen D. Linton, and that a will had been produced and probated in the records of the said court, meaning thereby the said will of the said Stephen D. Linton; that the same had been ordered to be executed, and that petitioner, as administrator, was under the law of Louisiana, in preference to all others, to be appointed dative executor of the said will, and praying that, after due proceedings had, he be appointed, and that after certain proceedings were had that the said defendant, J. Madison Wells, Jr., was by the judgment of the said court appointed dative testamentary executor of the said succession, and that he had qualified as such and was in the actual possession and administration in that capacity of all of the assets, and was engaged in the administration of the said succession as such dative executor, and pretended and averred in the said plea that the
131 said J. Madison Wells, Jr., was dative testamentary executor of the then said probated will of the said Stephen D. Linton, deceased, and was administering said succession in the said court by virtue of said appointment as dative testamentary executor under the said probated will and testament of the said Stephen D. Linton, deceased, dated at Matamoras, and that he, the said J. Madison Wells, Jr., had caused certain proceedings to be had in the said probate court contradictorally with your said oratrix, Marie P. Evans, and her said husband.

That the said court, on the 25th day of October, 1876, formally adjudged that the said judgment of the court, rendered on the 13th July, recognizing your said oratrix, Marie P. Evans, as universal legatee and ordering her to be put in possession, and the succession of the said Stephen D. Linton was declared null and void, and granted an injunction to restrain the enforcement of said judgment, and made said injunction perpetual.

And your oratrix and orator aver that it is not true that the said J. Madison Wells, Jr., was ever at any time in law or rightfully either the public administrator in charge of the said succes-
132 sion when it was averred and being administered as an intestate and alleged vacant succession; nor is it true that any proceedings of any lawful character or binding import, or ever had or provoked by the said J. Madison Wells, Jr., in the said probate court, by reason whereof it was ever lawfully or finally adjudged that your oratrix was not the universal heir and legatee of the succession of the said Stephen D. Linton; nor does it so appear of record in the said probate court of the parish of Rapides; nor is it true that the said J. Madison Wells, Jr., was ever lawfully appointed or ever acted as dative testamentary executor of the last will and testament of the said Stephen D. Linton, deceased, referred to in the said original bill of complaint, in said supplemental bill of complaint, or in said pleas of the said defendents. On the contrary thereof, no such judgment, record, adjudication, or decree exists in said court;

that your oratrix and orator are informed and believe that certain proceedings were at one time instituted in the said parish court of the parish of Rapides at the instigation of the said defendant, The State National Bank of New Orleans,
133 and the said defendant, David Urquhart; that the said J. Madison Wells, Jr., was a pliant tool in their hands and a conspirator with them to defraud and deprive your oratrix of her just rights in the succession of the said Stephen D. Linton, deceased, and that said proceedings were instituted and conducted in fraud and with the sole intention, desire, scheme, and plan on the part of the above-named defendants to further spoliate, and also under the pretended forms of proceedings in courts of justice, and appropriate to themselves the said Quantico plantation or the proceeds thereof, and to bring about and effect a sham, fraudulent, illegal, and irregular sale of the said plantation, and to convert the same, under the form of a pretended sale, into property which should appear to be their own or the property of their confederates, tools, or co-conspirators, and that the said J. Madison Wells, Jr., at the time he pretended to be public administrator, and as such did subserve the interests of the other parties defendant by conducting sham
134 and iniquitous proceedings in the said probate court, was not nor has he, as your oratrix and orator verily believe and aver, at any time been the duly qualified public administrator, under and by virtue of any law of the State of Louisiana, qualified to act as such in any court in said State or in this court.

That your oratrix and orator are informed and believe and therefore aver that the said J. Madison Wells, Jr., never took or subscribed to the oath of office as required by law, and that he never furnished or gave any bond of the character, description, and with the conditions required by law; that all of his pretensions to be public administrator were a sham and a fraud and a part of the scheme and device by which the said defendants sought to deprive your oratrix of her just rights and inheritance in said succession, and that all of his pretended legal proceedings on the part of J. Madison Wells, by which they thought to defeat and set aside the proceedings of the said will and testament of the said Stephen D. Linton, executed at Matamoras as aforesaid, were a part of the same scheme of fraud and of the prostitution of the processes, de-
135 crees, and orders of the courts to the end that they might harass, oppress, and defeat your oratrix of her just rights and share of the succession of the said Stephen D. Linton, and were commenced, prosecuted, and carried on for that purpose and with no honest intention.

And your oratrix and orator further show unto your honors that by reason of the oppressive and erroneous spoliation of the said estate and succession of the said Stephen D. Linton, carried on and effected by the said defendants, as set forth and disclosed in her said original and supplemental bill of complaint herein, the said defendants and their said confederates had left your oratrix destitute, and to a great extent illy prepared to compete with and resist the said defendants in their said scheme, prevent the consummation

thereof, and to meet and resist them in their said oppressive and fraudulent proceedings so carried on in the said probate court as aforesaid, and in order that she might be in a position to protect herself and enforce her rights in the said succession she was compelled to permit said defendants, through their creature and
136 tool, the said J. Madison Wells, Jr., to carry on their ursu-pation of the administration of the said succession to the extent of permitting or allowing, by not interfering therewith, the said defendant, J. Madison Wells, Jr., to represent said succession, to file a tableau of distribution in said probate court, in the parish of Rapides, and that the same, before the date of the exhibition of this her supplemental bill, has been by the said J. Madison Wells, Jr., filed and exhibited in the said probate court, and the said J. Madison Wells, Jr., has been discharged from the administration of the said succession in his pretended character as administrator or dative testamentary executor, and that the said J. Madison Wells, Jr., and the said defendants have no further claim or right to even their pretended and illegal control or administration of the succession of the said Stephen D. Linton, deceased.

That while the said defendants pretend and aver that an inventory of the property of the said succession was filed in the probate court, and pretended that the same was a true and complete inventory thereof, that it is not true that the said inventory of
137 all the property of the said succession was filed in said court; that it was part of the scheme of fraud on the part of the said defendants and their said confederates that the property belonging to the succession of the said Stephen D. Linton should never be brought into the probate court of the parish of Rapides or any other probate court or tribunal, for the reason that the largest asset and item of property of the said succession was the very sum of money due to the said succession by the said defendants, the said State National Bank of New Orleans and the said David Urquhart, resulting from their spoliation of the property of the said Stephen D. Linton while they were in possession of the said Quantico plantation, as averred and set forth in the said original bill of complaint.

Your oratrix and orator aver that the amount of property which the said defendants, the said State National Bank and the said David Urquhart, took from the said Quantico plantation belonging to the said Stephen D. Linton without right or process of law and without any pretense of right, which in law they hold in trust now for your oratrix as universal heir, executrix, and legatee of the said
138 Stephen D. Linton, deceased, far exceeded in amount any pretended sum which either the said defendant-, David Urquhart and the said State National Bank or its predecessor, the Louisiana State Bank, ever pretended at any time was due from the said Stephen D. Linton or his succession to them or any of them, and that they instituted, provoked, and carried on the said sham and pretended mortuary proceedings for the sole purpose and end of protecting themselves, if possible, through the simulated forms of a legal proceeding, from being called upon to restore to the said suc-

cession or yield up to the lawful owner thereof; that, in order to accomplish said purpose, they so managed the said J. Madison Wells, Jr., in his pretended conduct and management of the said succession that they carefully exclude themselves from the said inventory as among the list of debtors owing said succession or as having in their possession money which they well knew belonged to the succession of the said Stephen D. Linton, amounting, as your oratrix believes, to a sum exceeding the sum of eight hundred thousand dollars ($800,000), and that they hoped and endeavored through such false and simulated mortuary proceedings and through their control thereof to
139 conceal the fact from your oratrix, and that instead of being alleged creditors of the said succession they were in point of fact largely indebted thereto by virtue of property belonging to said succession in their possession, and that all said schemes and unjust proceedings taken by the said J. Madison Well, Jr., in said probate court looking to and tending to prevent your oratrix from *from* administer*y* said succession herself as executrix under the will of the said Stephen D. Linton were adopted, devised, and carried on by the said defendants through their tool and instrument, J. Madison Wells, Jr., to prevent and thwart any effort of your oratrix to compel them to honestly account for the property belonging to the said succession so in their possession as aforesaid and from yielding the same to her, and to make it appear fraudulently that they were creditors of the said succession instead of being indebted thereto for said property in their possession to an amount far exceeding any pretended claim they ever set up or alleged against the said succession.

And your oratrix and your orator further show unto your honors that since the filing of the said original and supplemental bill
140 in this case and since the date of the probate of the said will and testament of the said Stephen D. Linton set forth in her said original bill of complaint and referred to in the said several pleas of the said defendants your oratrix has discovered that the said Stephen D. Linton had, at a date subsequent to the date of the execution of his said will and testament above referred to, as executed at the city of Matamoras, in the United States of Mexico, at the city of Paris, in France, executed in due form of law a subsequent last will and testament on or about the thirtieth day of June, 1865, wherein and whereby he had again bequeathed and devised all of his property, real and personal, including all of the property described and set forth in the original bill of complaint herein, and made and constituted your oratrix universal legatee of all of said property, and that as such universal legatee she is entitled to have and hold the same as her sole and absolute property.

That on or about the 29th day of January, 1878, your oratrix, assisted in due form of law and authorized in that behalf by her said husband, your orator, in due form of law applied to the probate court of the parish of Rapides, the parish court of
141 the said parish having full and competent jurisdiction in that behalf, to have said will in due form of law probated and admitted to record in the said court, and that she might be recognized

and confirmed as universal legatee of the said Stephen D. Linton, deceased, and that she also might be confirmed as testamentary executrix of the said last will and testament, your oratrix being so named and appointed as the testamentary executrix of the said last will and testament by the terms, conditions, and provisions of said last will and testament.

And your oratrix and orator further show unto your honors that after due proceedings had in said court said will was then and there in due form admitted to probate and probated and recorded; and your oratrix, with the consent and authorization of her said husband, —duly confirmed and recognized to be the executrix of the said last will and testament aforesaid, and then and there duly qualified and is now the testamenty executrix of the said succession and sole universal legatee and heir thereof and in all things entitled to administer and control the same without any let, hindrance, or
142 obstruction from the said defendants or the said J. Madison Wells, Jr., in any particular or respect.

And your oratrix and orator further show unto your honors that although the said defendants, The State National Bank of New Orleans, aver and pretend and untruthfully assert that all of the assets and property of which the said Stephen D. Linton died seised was the Quantico plantation, stripped of all personal property, and all property of the character of personal property immoveable by destination, and that the same has been administered upon in the said probate court in the parish of Rapides and manipulated through the hands of their *creature* and confederate, J. Madison Wells, Jr., in his various alleged pretended representative capacities, and that they have not in their possession or under their control any property belonging to the said succession—

As your oratrix and orator have averred they have in their said original bill of complaint, and although they falsely pretend and aver that they are in nowise indebted to said succession, and that they have no property in their possession belonging to the succession of the said Stephen D. Linton that your oratrix is enti-
143 tled to have and receive by virtue of her character as testamentary executrix and as universal legatee, no sooner did your oratrix secure the lawful probate of the said last will and testament of the said Stephen D. Linton, deceased, made and executed in France as aforesaid, than the said defendant, the said State National Bank of New Orleans, and, as your oratrix verily believes, aided and abetted by the other said defendants, with the intent and purpose to harass, vex, discourage, and ruin your oratrix and subject her to oppressive costs and expenses, and thereby through an abuse of the courts and pretended judicial proceedings discourage and oppress your oratrix and to prevent her from insisting upon and obtaining a just account of the money in their hands belonging to the said succession and to your oratrix as universal legatee, appeared in the parish court in and for the parish of Rapides, and, falsely pretending to be creditors of the said succession, on or about the sixth day of February, 1878, filed a petition therein, praying, among other things, that your oratrix, as executrix of the last will and testament

of the said Stephen D. Linton, deceased, be required to give bond in a large and oppressive amount before she be permitted to
144 proceed to collect the debts due to said succession and to secure and compel the said defendants to return to the said succession the property belonging thereto in their possession; that the said scheme is a thin, transparent, and illy disguised effort to protect themselves against making the just return of the amount of the money belonging to the said succession now in their hands and unlawfully held by them by attempting to throw obstacles in the way of your oratrix obtaining redress in the courts, and, as your oratrix and orator verily believe and charge, instituted and commenced for no other purpose; and your oratrix and orator further show unto your honors that to the same end and to accomplish the same unlawful purpose the said defendant, The State National Bank of New Orleans, have instituted other proceedings in the said parish court in and for the parish of Rapides of the same unjust character, tending unjustly to hinder and embarrass your oratrix in the assertion of her lawful rights in the courts and to delay and prevent if possible any accounting to your oratrix for the said property and money belonging to the said succession of the said Stephen D. Linton in their hands to your oratrix as universal legatee of the said Stephen D. Linton
145 and as such executrix; and your oratrix and orator further represent unto your honors that they are informed and believe and therefore aver that it is pretended by the said defendant-, The State National Bank of New Orleans and the said David Urquhart, that at the time the said defendant, The Louisiana State Bank, the predecessor of the said defendant, The State National Bank of New Orleans, unlawfully took possession of the said Quantico plantation and of the said property of the said Stephen D. Linton thereon, in 1861, that one J. M. Lapeyre, who was or did act as the president of the said Louisiana State Bank and who participated as agent or officer of the said corporation in the unjust taking of the property of the said Stephen D. Linton and converting it to the use of the said bank, retained a portion thereof or the proceeds thereof in his possession.

(Here insert amendment.)

And your oratrix avers that if the same be true it was without the knowledge or consent of the said Stephen D. Linton in his lifetime or of your oratrix since the date of the decease of her said husband, Stephen D. Linton, or since she became the universal legatee of the said succession, but was, if done at all, with the con-
146 sent and connivance of the said corporation, and was in all respects an unlawful misappropriation and squandering of the property of the said Stephen D. Linton in its possession if the same occurred during his lifetime and of your oratrix if the same occurred since the decease of the said testator, Stephen D. Linton, and that the said defendant, the said State National Bank of New Orleans, is responsible to and should account to your oratrix for the same.

And your oratrix and orator further show unto your honors that on or about the — day of ——, 1871, the said J. M. Lapeyre departed this life; that he left as his heirs Mrs. Angelina Avegno Lapeyre, Albert Lapeyre, Fernand Lapeyre, Anna Lapeyre, George Lapeyre, and Martial Lapeyre; that all of said children of the said J. M. Lapeyre are minors except Albert P. Lapeyre, who claims to be emancipated by judicial proceedings, and Anna Lapeyre, emancipated by marriage.

That the said Mrs. Angelina Avegno Lapeyre, surviving widow of the said J. M. Lapeyre, in virtue of proceedings duly had in the second district court for the parish of Orleans, having full and complete jurisdiction thereof, has been duly appointed, qualified,
147 and is the tutrix of the said minor heirs of the said J. M. Lapeyre, deceased; that the said above-named persons, heirs, your oratrix and orator verily believe, are the sole heirs of the said J. M. Lapeyre, and all reside in the State of Louisiana.

And your oratrix and orator pray that the said Angelina Avegno Lapeyre, individually and as tutrix of the said minor heirs, and the above-named heirs of the said J. M. Lapeyre who have been emancipated or who have passed out of minority, may be made defendants herein and full, true, and complete answer make to the premises according to the very best of their knowledge, information and belief, and under the corporeal oath of each of them.

And your oratrix and orator further show unto your honors that they are informed and believe that the said J. Madison Wells, who, as your oratrix is informed and believes, was, in 1861 and various times after that date, an agent or instrument of the said David Urquhart and the Louisiana State Bank and its successor, the State National Bank of New Orleans, in their act of appropriating to their own control the proceeds of or the property belonging to the said Stephen D. Linton at the time when the said defendants
148 took possession of the said Quantico plantation and appropriated the cotton and other property on the said plantation to their own use, was given or permitted to take a certain considerable share thereof to his own use and benefit, and that he has the same now in his possession.

And your oratrix and orator show unto your honors that the said J. Madison Wells was never so permitted or authorized by the said Stephen D. Linton during his lifetime or by your oratrix as universal legatee of the said Stephen D. Linton since the date of the decease of the said Linton, and that if the said J. Madison Wells was permitted to absorb or take the possession of any part or portion of said property it was with the advice and consent and at the instance and instigation and by the permission of the said defendants, the said David Urquhart or The Louisiana State Bank or its successor, The State National Bank of New Orleans, and that the State National Bank of New Orleans is responsible to your oratrix for the entire amount of the property belonging to the said succession which came into their possession and was under their control without regard to any unlawful distribution or disposition which they
149 may have made of any portion of the same, either to the said J. Madison Wells or to any other person.

And your oratrix and orator pray that the said J. Madison Wells may be made a party hereto, and that he be required under his corporeal oath true, perfect, and complete answer to the premises make according to the very best of his knowledge, information, and belief, and he discover in all respects and particulars any and all dealings which he may have had with the other defendants or either of them in respect to any of the said property described in the said complainants' original bill of complaint or which was upon the Quantico plantation at the time the same was taken possession of by the said defendants or any of them, in the year 1861 or afterwards, at the time when the said property was converted into money and what disposition was made of the same and into whose possession the same passed.

And your oratrix and orator further show unto your honors that they are informed and believe and therefore aver that since the death of the said J. M. Lapeyre and the appointment of his said surviving widow as tutrix of the said minor children that one
150 of the said minors, Albert Pike Lapeyre, by some proceedings had or claimed to have been had in some court of the State of Louisiana, was emancipated prior to his majority and now claims to be no longer subject to the incidents of minority by virtue of said judicial proceedings, and they pray that he may be made a party to this bill as defendant; that he resides in the city of New Orleans, in the State of Louisiana.

They further represent unto your honors that another of the said minor heirs of the said J. M. Lapeyre, the said Louise Lapeyre, since the decease of her said father and prior to the time of her arriving at full majority has become emancipated by virtue of her marriage with one F. J. Gasquet, and that she now is his wife and also resides in the city of New Orleans with her said husband in coverture.

Wherefore they pray that the said Louise Gasquet and her said husband, F. J. Gasquet, may also be made parties defendant to this bill.

And your oratrix and orator further show unto your honors that since the date of the filing of the said original bill of com-
151 plaint herein they have been advised and informed and verily believe and therefore charge that at the time the said defendant, The State National Bank of New Orleans, or its said predecessor took possession of the said Quantico plantation and of the property belonging to the said Stephen D. Linton, then located on the said plantation, that among other personal property belonging to the said Stephen D. Linton which they took into their possession were a large number of bales of cotton, the precise number of which they are unable now to state and ask that the said defendants be required to make full disclosure thereof, but which they have reason to believe and do believe and therefore aver amounted in the total to at least eighteen hundred bales, of an average weight of five hundred pounds per bale, if not of a greater weight, and which, in disregard of the rights of the said Stephen D. Linton, they converted into money and now have the same in their possession.

And your oratrix and orator further show unto your honors that

they are informed and believe and therefore charge that a portion of the said eighteen hundred bales of cotton, amounting to between seven and eight hundred, was at some time between the year
152 1861 and the latter part of 1864 by the said J. M. Lapeyre, at that time acting as the president of the said Louisiana State Bank or acting as their agent in some other capacity or through the instigation and agency of the said bank through some other agent, shipped to the city of New Orleans, consigned to some person or persons here in the city of New Orleans to your oratrix at present unknown; that the said bank, instead of holding the said cotton and treating the same as the property of the said Stephen D. Linton, wrongfully caused the same to be sold and the proceeds thereof, amounting, as your oratrix verily believes, to at least one dollar and sixty cents per pound, to be delivered to the said Louisiana State Bank; that the said cotton and the said proceeds thereof were and are at all times the property of the said Stephen D. Linton and the lawful representative of his said succession.

That your oratrix and orator verily believe and therefore aver and charge that the said J. M. Lapeyre, acting as an officer or agent of the said corporation, was fully cognizant and had knowledge of all the details of said wrongful transaction, and that at the time of his death he was in possession of and had under his control
153 writings, papers, documents, accounts of sale, and other written evidence about and concerning said transportation and sale of said last-mentioned cotton, which, if produced, would fully establish the claim and right of your oratrix to have and receive the said sum of money, the proceeds thereof, and which would show or tend to show the exact amount of money received for said cotton and for which the said defendants are accountable to your orator.

And they further show unto your honors that they have reason to believe and do believe that the said surviving widow of the said J. M. Lapeyre, made defendant herein individually and as tutrix of the said minor heirs or the said heirs of the said J. M. Lapeyre, still have in their possession all of said documents, writings, and proofs.

And your oratrix and orator pray your honors that they and all of them may be required to make a full and complete disclosure and exhibit and produce in court all such papers, writings, proofs, and documents, or, in the event that the same have been by them lost or destroyed, that they be required, according to the very best of their recollection, information, remembrance, and belief,
154 to fully answer and disclose the nature, character, and contents of any and all such writings.

And your oratrix and orator further show unto your honors that they are also advised, informed, and believe, from information which has come to your oratrix since the date of the filing of the said original and supplemental bill herein, that the said defendants pretend and say that a large portion of the said cotton taken possession of by the said defendants on the Quantico plantation and remaining after that portion above referred to was shipped to the city of New Orleans was at some time, while they were in the wrongful

possession of the said Quantico plantation and of the said property, taken from their possession and control or removed from said plantation by the military or naval forces of the United States and transported to some point in the State of Illinois.

And your oratrix and orator aver that there was no just or lawful cause why the military or naval forces of the United States should have taken possession of the said property of Stephen D. Linton, and that the same in no manner could have been lawfully captured or made a prize of war.

155 And your oratrix and orator further show unto your honors that she is advised, informed, believes, and therefore avers that the said Louisiana State Bank, through its officer, the said J. M. Lapeyre, and other confederates of the said Louisiana State Bank, claiming and pretending to be the lawful owners of said cotton so transported to some place in the State of Illinois, followed the same, claiming and pretending to be the lawful owner thereof; in some way received from either the courts of the United States or from some officer or officers or department of the Government of the United States representing the same the full value of all of said cotton so taken possession of by the military or naval authorities of the United States, and that the same was delivered over to and was in the possession of the said Louisiana State Bank and is now in the possession and control of the said defendant, The State National Bank of New Orleans; that your oratrix is unable to show unto your honors the exact number of bales of cotton for which the said defendants received the price or value thereof, or the exact weight of each of said bales, or the exact amount received by the said defendants, as aforesaid, for the same; but that she verily believes that the said defendant, the

156 said State National Bank, and the said tutrix of the minor heirs of the said J. M. Lapeyre, or the heirs or widow of the said J. M. Lapeyre or the said J. Madison Wells, defendant herein, have in their possession or in the possession and control of them, or some of them, writings, papers, documents, and written proof, which, if produced, would establish the amounts received by the said State National Bank or its predecessor from the Government of the United States on account of the said cotton, as well as the fact that they wrongfully pretended to be the owners thereof and to have the right to receive the same.

And your oratrix and orator pray that the said defendants, each and all, may be required full, true, and complete answer to make to the premises in this behalf according to the very best of their respective knowledge, information, and belief, and disclose and produce in court all and singular all such writings, papers, and proofs which they may have in their possession or under their control or which may be in the possession or under the control of any associate or person confederated with the said defendants or any one of them.

And your oratrix and orator further show unto your honors

157 that they have reason to believe and do believe that the said defendant, The Louisiana State Bank, or other of the said defendants have in their possession or under their control papers,

writings, documents, and other written proofs which, if produced, would show and disclose exactly the amount of profit and gain which the said defendants or any of them acquired or received for and on account of crops of cotton or other produce grown and produced upon the said Quantico plantation while in control of and being cultivated by the said defendants or some of them, and which said profits and proceeds of the said cultivation and use of the said Quantico plantation are also, as your oratrix and orator verily believe, the property of the said Stephen D. Linton or belonging to his succession.

And your oratrix and orator in this behalf further pray that the said defendants, each and all of them, be required under their corporeal oath to fully answer in this behalf and to disclose in detail and particular each, every, all, and singular such written documents, statements, proofs, and evidence *that* are now in their possession or under their control or which have at any time been in their possession or under their control, and, if the same or any portion thereof have been lost or destroyed, parted with or
158 concealed, that they and each of them having any knowledge thereof be required, under their corporeal oaths, according to the very best of their recollection, remembrance, and belief, full and true disclosure make of the character and contents of each, every, all, and singular such writings, proofs, and documents.

And your oratrix and orator further show unto your honors that inasmuch as they are remediless in the premises at common law and cannot obtain full and complete redress in this behalf except in a court of equity, and to the end that the said defendants and each of them can show why your oratrix should not be entitled to have the relief therein prayed for, pray that said defendants, each and all of them, the said State National Bank of New Orleans, in due and proper form under its corporate seal, and the other said defendants, under their corporeal oaths, true, full, perfect, and complete answer to the premises make according to the very best of their several and respective knowledge, recollection, information, and belief, — full disclosure make, as herein and hereby prayed for, of all the documents, writings, and proofs relating to the matter set forth and alleged in the premises as may be in their possession or under their control and not destroyed, lost, or concealed beyond the possibility of recovery thereof by the said defendants and any of them; in such case they be required to set forth the contents of each
159 and every of such lost, destroyed, or missing documents according to their very best recollection and belief of the contents, import, and terms thereof.

That your oratrix and orator verily believe that the said defendants have heretofore and are now confederating with divers other persons to your oratrix and orator at present unknown, and they pray that when discovered they have leave to make such confederates confederating with the said defendants or either of them to wrong and injure your oratrix in the premises defendants herein, with apt words, charges, and statements, to charge them in the premises.

And your oratrix and orator further pray your honors that your honors grant them the most gracious writ of injunction, both preliminary and perpetual, enjoining, inhibiting, and restraining the said defendants, each and all of them, their several attorneys, servants, agents, and confederates, from in any manner disposing of or from aiding either in the disposition or removal of any of the proceeds of the said property so wrongfully in their possession as aforesaid beyond the jurisdiction of this court, and commanding them that they hold the same and all parts and portions thereof and respond to the decree and direction of the court in the premises; and, further, that they desist from all unjust, inequitable, and oppressive
160 proceedings having for their purpose and object to hinder, obstruct, and delay your oratrix in obtaining full, complete, and absolute relief and justice in the premises; that the said defendants and all of them may come to a true, just, complete, and full account of all and singular the property in their possession or which they have had in their possession at any time belonging to the said Stephen D. Linton in his lifetime and to his succession since his decease, whether the same be in its original form as taken possession of by them or whether the same may have *have* been reduced to cash or money in any form or invested or exchanged for any other property, and that the same may be decreed to have belonged to the said Stephen D. Linton in his lifetime and to his succession since his said decease, and that the said defendant, the said State National Bank, and each and all of the said defendants having any of the same in their possession may be decreed to hold the same in trust, to be accounted for and paid over to your oratrix in her said capacity as testamentary executrix of the last will and testament of the said Stephen D. Linton, to be by her applied, first, to the payment of all the just and existing debts due by the said succession,
161 and that the residuum thereof after such just and proper administration shall be decreed to be the property of your oratrix as universal legatee of the said Stephen D. Linton.

And your oratrix and orator pray that they be allowed to file and exhibit in this court in this cause their supplemental bill of complaint, and that your honors require and compel the said defendants herein, who are defendants in the said original bill and in the said supplemental — heretofore filed herein, to file and true and perfect answer make to the same.

And your oratrix and orator again pray your honors to grant them the relief prayed for by them in their said original and supplemental bill-, as well as the relief prayed for herein, and that your honors grant unto your oratrix and orator the most gracious writ of subpœna according to due form of law, to be issued under the seal of this honorable court, directed to the said defendants, The State National Bank, the said David Urquhart, the said J. Madison Wells, Jr., the said J. Madison Wells, the said Angelina Avegno
162 Lapeyre, surviving widow of the said J. M. Lapeyre, individually and as tutrix of the said minor heirs of the said J. M. Lapeyre; and to the said Albert Lapeyre and the said Louise Gasquet and the said F. J. Gasquet, her husband, commanding them

and each of them to be and appear before your honors in this court, at a day certain in said writs to be named, under a certain penalty in said writs to be named, and then and there full, true, and complete answer make to the premises and stand to and abide all such orders and decrees as your honors may make in the premises, and that your honors grant unto your oratrix such other and further relief in the premises as to your honors may seem meet and just and as the nature of this case may require; and your oratrix and orator will ever pray, etc.

(Signed) MARIE P. EVANS.
(Signed) J. R. BECKWITH,
Solicitor & Counsel for Compl'ts.

163 *Motion. Filed 23rd March*, 1878.

MARIE P. EVANS *et al.*
vs.
DAVID URQUHART *et al.* } No. 7672. In Equity.

On motion of B. F. Jonas, solicitor for David Urquhart, one of the defendants herein, it is ordered that a further delay of ten days be granted to defendants in which to move to strike out said supplimental bill, without prejudice to the rights of complainants.

164 *Entry in Chancery Order Book, March 26th*, 1878.

MARIE P. EVANS *et als.*
vs.
DAVID URQUHART *et als.* }

J. Madison Wells & J. Madison Wells, Junior, defendants herein, have this day, by their solicitors, J. & C. B. Ray, entered their appearance to the supplemental bill of complaint of said complainants.

Entry in Chancery Book, May 6th, 1878.

MARIE P. EVANS *et als.*
vs.
STATE NATIONAL BANK. } 7672.

The State National Bank has this day, by its solicitor, James McConnell, entered its appearance to the complainants' supplemental bill of complaint.

165 *Appearance. Filed 6th May*, 1878.

MARIE P. EVANS *et al.*
vs.
DAVID URQUHART *et al.* } No. 7672. In Equity.

The clerk is requested to enter our appearance for the following parties, made defendants by supplemental bill:

1. Angelina Avegno Lapeyre, widow of the late J. M. Lapeyre, individually and as natural tutrix of George and Mential Lapeyre.
2. Albert Lapeyre.
3. Mrs. Louisa Lapeyre Gasquet and F. J. Gasquet, her husband.

(Signed) GILMORE & SONS,
Solicitors for said Defendants.

166 *Appearance. Filed 6th May,* 1878.

MARIE P. EVANS *et al.*
vs.
DAVID URQUHART *et al.* } No. 7672. In Equity.

Now comes David Urquhart, one of the defendants herein, and enters his appearance to the supplemental bill herein filed by complainants.

(Signed) DAVID URQUHART,
By B. F. JONAS, *Solicitor.*

167 *Demurrer to Supplemental Bill by Widow Lapeyre, &c. Filed 1st June,* 1878.

MARIE P. EVANS *et al.*
vs.
D. URQUHART *et al.* } No. 7672. In Equity.

The joint and several demurrer of Angelina Avegno Lapeyre, widow of J. M. Lapeyre, deceased, individually and also as tutrix of her minor children, George Lapeyre and Martial Lapeyre, and of Albert Lapeyre, Louise Lapeyre, wife of Francis J. Gasquet, and of the said Francis J. Gasquet, joining herein to authorize and assist his said wife, defendants, to the supplemental bill of complaint of Marie P. Evans and William R. Evans, her husband.

These defendants, by protestation, not confessing any of the matters in the said supplemental bill complained of to be true in manner and form as the same are therein set forth, severally say that they are advised that there is no matter or thing in the said supplemental bill good and sufficient in law to call these defendants to account in this honorable court for the same, but that there is good cause of demurrer thereunto, and they do demur accordingly, and for causes
168 of further demurrer say that said supplemental bill, in case the same were true, contains no matter of equity whereon this court can ground any decree or give complainants any relief against these defendants.

Wherefore, and for divers other errors in said supplemental bill contained and appearing on the face thereof, these defendants do demur thereto and humbly crave the judgment of this hon. court whether they are compellable or ought to make any answer thereunto other than as aforesaid.

And these defendants humbly pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

(Signed) T. GILMORE & SON, *Solicitors.*
(Signed) J. A. CAMPBELL, *Sol'r.*

We certify that in our opinion the foregoing demurrer is well founded in point of law.

(Signed) T. GILMORE.
(Signed) J. A. CAMPBELL.

Albert Lapeyre, one of the foregoing defendants, states on oath that the foregoing demurrer is not interposed for delay.

(Signed) A. J. B. LAPEYRE.

Sworn to and subscribed before me this 1st June, 1878.

(Signed) F. B. VINOT,
U. S. Comm'r.

169 *Application for Further Time to Answer & Plead by J. M. Wells. Filed 3rd June,* 1878.

MARIE P. EVANS *et al.*
vs.
DAVID URQUHART *et al.* } No. 7672. In Equity.

J. Madison Wells, by his attorneys, J. & C. B. Ray, move this hon. court for additional time to plead and file answer to the plaintiffs' bill in the above-entitled cause, for the reason that since the subpœna in this case has been served on this defendant that the record and papers in the case have not been in the clerk's office, but in the hands of other counsel in this cause, even up to Saturday last, the 1st June, 1878, and that defendants' counsel has not been able to have oyer of them; wherefore further time to plead and answer is prayed for.

Let the above defendant have until the first Monday of July, 1878, to plead and file answer in this case for the reasons above alleged.

Defendants' attorney, John Ray, makes oath that the facts stated in the above application are true.

(Signed) JOHN RAY.

Signed & sworn to before the undersigned on this 3rd day of June, 1878.

(Signed) F. B. VINOT,
U. S. Comm'r.

...or Time to Answer for D. Urquhart. Filed 3rd June, 1878.

...plem...
...nd the said
relying

MARIE P. EVANS & HUSBAND
vs.
DAVID URQUHART *et al.*. } No. 7672. In Equity.

It is agreed that David Urquhart, one of the respondents herein, have a delay of 15 days in which to file his answer to the supplemental bill herein, filed on the 12th of March, 1878.

(Signed) J. R. BECKWITH,
Sol'r for Compl's.

New Orleans, June 3rd, 1878.

171 *Demurrer, Plea, & Answer of State National Bank. Filed 3rd June, 1878.*

MARIE P. EVANS and WM. R. EVANS, Her Husband,
vs.
D. URQUHART *et als.* } No. 7672. In Equity.

The demurrer, plea, and answer of The State National Bank of New Orleans, one of the defendants to the original and supplemental bills of complaint of Marie P. Evans and Wm. R. Evans, her husband, complainants.

This defendant, by protestation, not confessing all or any of the matters and things in said complainants' said bills to be true in manner and form as the same are therein and thereby alleged and set forth, and denying all and all manner of fraud and fraudulent concealment, combination, and conspiracy as therein charged, to so much of the second and last supplemental bill as relates to the alleged discovery by complainants of an alleged will of Stephen D. Linton in said bill mentioned, purporting to have been executed at Paris, in France, on or about the 30th of June, 1865, and subsequent in date to the alleged will of said Linton, purporting to have been executed at the city of Matamoras, in Mexico, on the 20th of December, 1863, which said last-mentioned will and certain
172 proceedings alleged to have been had thereupon in the parish court of the parish of Rapides, Louisiana, are set up and relied upon in the original and first supplemental bills as constituting the title of the said Marie P. Evans as testamentary executrix and legatee of the said Stephen D. Linton to call upon this defendant to account to her in this court in respect of the matters averred and set forth in said bills, and to so much of said second supplemental bill as relates to the alleged probate, on or about the 29th of January, 1878, of said alleged will of the 30th of June, 1865, and to the alleged recognition and confirmation by the parish court of the said parish of Rapides, at or about the time of said probate, of the said

Marie P. Evans as testamentary executrix and unive dismissed with
Stephen D. Linton under said alleged will of June sustained.
to so much of said second supplemental bill as alleg *Solicitors.*
time subsequent to the filing of the original and first
bills, and of the pleas of this defendant thereto, and of the
tion of the complainants to said pleas, J. Madison Wells, Jr., in
said pleadings mentioned, has been discharged from the ad-
173 ministration as dative testamentary executor of said will of
the 20th of December, 1863, of the succession of said Stephen D. Linton, this defendant doth demur, and for cause of demurrer showeth that the title now set up by said Marie P. Evans as testamentary executrix and universal legatee of said Stephen D. Linton in and by said second supplemental bill under the said alleged will of June 30th, 1865, and the probate thereof and the proceedings alleged to have been had thereupon in said parish court of the parish of Rapides on and after the 29th of January, 1878, whereby she now claims the right to call upon this defendant to answer and account to her in respect of the matters averred and set forth in her said bills constitute a new title, different and distinct from and inconsistent with the title set up and relied upon by her in her original and first supplemental bills, to wit, the said alleged will of December 20th, 1863, the alleged probate thereof, and the proceedings alleged to have been had thereunder, and that this new, different, and inconsistent title cannot be set up by way of supplemental to the title averred
and relied upon in and by the said original and first sup-
174 plemental bills, but that complainants can only aver and set up this new and inconsistent title in and by an original bill for that purpose.

And this defendant, as appears upon the face of said second supplemental bill, having pleaded to the said original and first supplemental bills that the said Marie P. Evans was not entitled to call upon this defendant to answer and account to her in respect of the matters averred and set forth in said bills as executrix and legatee of the said Stephen D. Linton under said will of the 20th of December, 1863, the probate thereof, and the proceedings thereunder, for the reason that she was not executrix under said will, but that another person, to wit, the said J. Madison Wells, Jr., was dative executor of said will and in the actual administration in the said capacity of the succession of the said Stephen D. Linton, the averment in the said second supplemental bill of the subsequent discharge of the said Wells as dative executor of the said will of December 20th, 1863, and of the recognition and confirmation of the said Marie P. Evans as testamentary executrix of the will of 1865 is not matter of supplement to substantiate, support, or make good in any way any
matter averred in the original and first supplemental bills,
175 but matter to do away with and supersede entirely the alleged right and title upon which the original and first supplemental bills were brought, and therefore cannot be set up in a bill supplementary to those bills, but can be averred and relied upon only in a bill original.

Wherefore, and for divers other good causes of demurrer appear-

ls, this defendant prays the judgment of the court compelled to make any answer to so much of said plemental bill as is herein and hereby demurred to.

And the said defendant, not waiving his said demurrer but wholly relying thereon, as to so much of said bills as is demurred to, and by protestation, not confessing all or any of the matters and things in said bills to be true in manner and form as the same are therein and thereby alleged and set forth, and denying all and all manner of fraud, fraudulent concealment, combination, and conspiracy as therein charged, as to the residue of said bills not hereinbefore demurred to doth plead thereto and for plea saith that at the time averred in the original and first supplemental bills and in that portion of the second supplemental bill not demurred to the said Marie P. Evans was not executrix or legal representative of the said Stephen D. Linton, duly appointed and qualified to act, as in said bills set forth.

176 And this defendant makes part of this its present plea the plea heretofore pleaded herein to the original and first supplemental bills filed on the 3d of March, 1877, and of record in the cause; all and singular the averments and denials of which plea it now reiterates as part of this plea.

And this defendant denies the truth of all and singular the averments in said second supplemental bill which are in the nature of a special replicatian to said plea and set-up matters of avoidance thereof, and specially denies that the proceedings in the parish court of the parish of Rapides specifically set forth and pleaded in said plea, whereby the said court, on the 25th of October, 1876, formally adjudged that the judgment of said court of the 13th of July, 1876, recognizing the said Marie P. Evans as universal legatee of the said Stephen D. Linton and ordering her to be put in possession of his succession was declared null and void were, as averred in said second supplemental bill, sham proceedings or collusive or fraudulent or corrupt or in any way invalid; but, on the contrary, this defendant avers the truth to be that said proceedings were valid,

177 lawful, and *bona fide* proceedings, brought and carried on for the lawful and legitimate purposes for which they purport on their face to have brought and carried on; that they were proceedings of a court of competent and exclusive jurisdiction to deal with and determine the matters therein and thereby determined, and that the proceedings and judgments of said court, specifically set forth and pleaded in said plea, are obligatory and binding on all parties and all courts until lawfully reversed or set aside, and that said judgments conclusively decide and determine against the said Marie P. Evans; that she never was at any time executrix of the said Stephen D. Linton under said will of the 20th of December, 1863, and never lawfully in possession of said succession as legatee under said will.

And this defendant, not waiving his said demurrer or plea, but insisting thereon, for answer to so much of said bills as he is advised that he is called upon or required to answer in support of his said plea, denies all and singular the charges of fraud, fraudulent combi-

nation, and conspiracy, concealment, and contriv- dismissed with
any and all of the matters averred in the said bills, and sustained.
singular the facts averred in said bills in so far as any citors.
circumstance of fraud or covin or combination or conceal-
178 ment is averred to attend, accompany, or constitute said facts or any part thereof, and this defendant avers that all its acts and doings in the premises have been lawful, legitimate, and *bona fide* and for the assertion and protection of its legal and equitable rights.

And this defendant again denies all and all manner of unlawful combination and confederacy wherewith he is by the said bills charged; without this, that there is any other matter, cause, or thing in the said complainants' said bills of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and prays to be hence dismissed with reasonable costs and charges in this behalf sustained.

Louis A. Wiltz, being duly sworn, says that he is vice-president of the State National Bank of New Orleans, in the foregoing pleadings named, and that the several matters and things stated in the foregoing plea and answer are true to the best of his knowledge and belief, and that the said demurrer and plea are not interposed for delay, and that Samuel H. Kennedy, president of said bank, is absent and affiant is acting president of said bank at this time.

(Signed) LOUIS A. WILTZ.

179 Sworn to and subscribed before the undersigned, a commissioner of the circuit court, duly appointed and sworn by the circuit court of the United States in and for the district of Louisiana, at New Orleans, as witness my hand and seal, at New Orleans this 3rd June, 1878.

(Signed) ANDREW HERO, JR.,
Commissioner of Circuit Court.

We hereby certify that the foregoing plea and demurrer are, in our opinion, well founded in point of law.

(Signed) J. McCONNELL,
(Signed) KELLY & LAZARUS,
Solicitors for Defendant.

180 *Demurrer, Plea, & Answer of David Urquhart. Filed 18th June*, 1878.

MARIE P. EVANS & WM. R. EVANS, Her Husband,
vs.
D. URQUHART *et als.*
} No. 7672. In Equity.

The demurrer, plea, and answer of David Urquhart, of New Orleans, one of the defendants, to the original and supplemental bills of complaint of Marie P. Evans and Wm. R. Evans, her husband, complainants.

This defendant, by protestation, not confessing all or any of the matters and things in said complainants' said bills to be true in manner and form as the same are therein alleged and set forth, and denying all and any manner of fraud and fraudulent concealment, combination, and conspiracy, as therein charged, to so much of the second and last supplemental bill as relates to the alleged discovery by complainants of an alleged will of Stephen D. Linton in said bills mentioned, purporting to have been executed at Paris, in France, on or about the 30th of June, 1865, and subsequent
181 in date to the alleged will of the said Linton, purporting to have been executed at the city of Matamoras, in Mexico, on the 20th of December, 1863, which said last-mentioned will and certain proceedings alleged to have been had thereupon in the parish court of the parish of Rapides, Louisiana, and set up and relied upon in the original and first supplemental bills as constituting the title of the said Marie P. Evans as testamentary executrix and legatee of the said Stephen D. Linton to call upon this defendant to account to her in this court in respect of the matters averred and set forth in said bills, and to so much of said second supplemental bill as relates to the alleged probate on or about the 29th of January, 1878, of said alleged will of the 30th of June, 1865, and to the alleged recognition and confirmation by the parish court of the said parish of Rapides at or about the time of said probate of the said Marie P. Evans as testamentary executrix and universal legatee of said Stephen D. Linton under said alleged will of June 30th, 1865, and to so much of said second supplemental bill as alleges that at some time subsequent to the filing of the original and first supplemental bills and of the pleas of this defendant thereto and of
182 the replication of the complainants to said pleas J. Madison Wells, Jr., in said pleadings mentioned, has been discharged from the administration as dative testamentary executor of said will of the 20th of December, 1863, of the succession of said Stephen D. Linton—this defendant doth demur, and for cause of demurrer showeth that the title now set up by the said Marie P. Evans as testamentary executrix and universal legatee of said Stephen D. Linton in and by said second supplemental bill under the said alleged will of June 30th, 1865, and the probate thereof, and the proceedings alleged to have been had thereupon in said parish court of the parish of Rap-

ides on and after the 29th of January, 1878, whereby she now claims the right to call upon this court to answer and account to her in respect of the matters averred and set forth in her said bills, constitute a new title, different and distinct from and inconsistent with the title set up and relied upon by her in her original and first supplemental bills, to wit, the said alleged will of December 20th, 1863, the alleged probate thereof, and the proceedings alleged to have been had
183 thereunder, and that this new, different, and inconsistent title cannot be set up by way of supplement to the title averred and relied upon in and by the said original and first supplemental bills, but that complainants can only aver and set up this new and inconsistent title in and by an original bill for that purpose.

And this defendant, as appears upon the face of said second supplemental bill, having pleaded to the said original and first supplemental bills that the said Marie P. Evans was not entitled to call upon this defendant to answer and account to her in respect of the matters averred and set forth in said bills, as executrix and legatee of the said Stephen D. Linton, under said will of the 20th of December, 1863, the probate thereof, and the proceedings thereunder, for the reason that she was not executrix under said will, but that another person, to wit, the said J. Madison Wells, Jr., was dative executor of said will and in the actual administration in the said capacity of the succession of the said Stephen D. Linton, the averment in the said second supplemental bill of the subsequent discharge of the said Wells as dative executor of the said will
184 of December 20th, 1863, and of the recognition and confirmation of the said Marie P. Evans as testamentary executrix of the will of 1865 is not matter of supplement to substantiate, support, or make good in any way any matter averred in the original and first supplemental bills, but matter to do away with and supersede entirely the alleged right and title upon which the original and first supplemental bills were brought, and therefore cannot be set up in a bill supplementary to those bills, but can be averred and relied upon only in a bill original.

Wherefore and for divers other good causes of demurrer appearing in the said bills this defendant prays the judgment of the court whether he be compelled to make any answer to so much of said second supplemental bill as is herein and hereby demurred to.

And the said defendant, not waiving his said demurrer, but wholly relying thereon as to so much of said bills as is demurred to, and by protestation not confessing all or any of the matters and things in said bills to be true in manner and form as the same are
185 therein and thereby alleged and set forth, and denying all and all manner of fraud, fraudulent concealment, combination, and conspiracy as therein charged as to the residue of said bills not hereinbefore demurred to, doth plead thereto, and for plea saith that at the times averred in the original and first supplemental bills and in that portion of the second supplemental bill not demurred to the said Marie P. Evans was not executrix or legal representative of the said Stephen D. Linton, duly appointed and qualified to act as in said bills set forth, and this defendant makes part of this its present

plea the plea heretofore pleaded herein to the original and first supplemental bills filed on the 3d of March, 1877, and of record in the cause; all and singular the averments and denials of which plea it now reiterates as part of this plea.

And this defendant denies the truth of all and singular the averments in said second supplemental bill which are in the nature of a special replication to said plea and set up matters of avoidance thereof, and specially denies that the proceedings in the parish court of the parish of Rapides, specifically set forth and
186 pleaded in said plea, whereby the said court, on the 25th of October, 1876, formally adjudged that the judgment of said court of the 13th of July, 1876, recognizing the said Marie P. Evans as universal legatee of the said Stephen D. Linton and ordering her to be put in possession of his succession was declared null and void, were, as averred in said second supplemental bill, sham proceedings or collusive or fraudulent or corrupt or in any way invalid; but, on the contrary, this defendant avers the truth to be that said proceedings were valid, lawful, and *bona fide* proceedings brought and carried on for the lawful and legitimate purposes for which they purport on their face to have — brought and carried on; that they were proceedings of a court of competent and exclusive jurisdiction to deal with and determine the matters therein and thereby determined, and that the proceedings and judgments of said court specifically set forth and pleaded in said plea are obligatory and binding on all parties and all courts until lawfully reversed
187 or set aside, and that said judgments conclusively decide and determine against the said Marie P. Evans that she was never at any time executrix of the said Stephen D. Linton under said will of the 20th of December, 1863, and never lawfully in possession of said succession as legatee under said will.

And this defendant, not waiving his said demurrer or plea, but insisting thereon, for answer to so much of said bills as he is advised that he is called upon as required to answer in support of his said plea, denies all and singular the charges of fraud, fraudulent combination and conspiracy, concealment and contrivance in respect of any and all of the matters averred in the said bills, and denies all and singular the facts averred in said bills in so far as any element or circumstance of fraud or cover or concealment or combi-
188 nation or concealment is averred to attend, accompany, or constitute said facts or any part thereof; and this defendant avers that all its acts and doings in the premises have been lawful, legitimate, and *bona fide*, and for the assertion and protection of its legal and equitable rights.

And this defendant again denies all and every manner of unlawful combination and confederacy wherewith he is by the said bills charged; without this, that there is any other mattter, cause, or thing in the said complainants' said bills of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true to the knowledge or belief of this defendant, all which matters and things this defendant is ready and will-

ing to aver, maintain, and prove as this honorable court shall direct; and defendant prays to be hence dismissed with reasonable
189 costs and charges in this behalf sustained.

(Signed) DAVID URQUHART,
By B. F. JONAS, *Solicitor.*

Personally appeared B. F. Jonas, who, being duly sworn, says that he is solicitor for David Urquhart, who is temporarily absent from the city and will not return in time to make answer to this bill or swear to this demurrer, plea, and answer.

Affiant says that the several matters and things stated in the foregoing plea and answer are true to the best of his knowledge and belief, and that the said demurrer and plea are not interposed for delay.

(Signed) B. F. JONAS.

Sworn to and subscribed before me this 18th day of June, 1878.

(Signed) R. C. MOTT,
[SEAL.] *Notary Public in and for the Parish of Orleans, La.*

I hereby certify that the foregoing plea and demurrer are, in my opinion, well founded in law.

(Signed) B. F. JONAS,
Solicitor for D. Urquhart.

190 *Order Setting Down Pleas & Demurrers. Entered 1st July,* 1878.

MARIE P. EVANS *et al.*
vs.
DAVID URQUHART *et al.* } No. 7672. In Equity.

The clerk of the court will set down for hearing in the book Common Rules in Equity *for hearing* the several pleas of David Urquhart and The State National Bank of New Orleans, defendants, together with the demurrers filed by each of said last-named defendants in manner as pleaded; also set down for hearing the joint and several demurrer of Angelina A. Lapeyre for herself and as representative of minor heirs of J. M. Lapeyre, deceased, and Geo. Lapeyre, Martial Lapeyre, Albert Lapeyre, & Louise Lapeyre, wife of Francis J. Gasquet, & her husband.

(Signed) J. R. BECKWITH,
Sol. for Comp'ts.

191 *Pleas Fixed for Hearing.*

Extract from the Minutes, November Term, 1878.

MARIE P. EVANS *et als.*
vs.
DAVID URQUHART *et als.* } 7672.

FEBRUARY 24TH, 1879.

On motion of T. Gilmore & Sons, solicitors for Mrs. Angelina

Avegno Lapeyre, widow of J. M. Lapeyre, deceased, individually and as tutrix of her minor children and of Albert Lapeyre *et als.*, defendants herein—

Ordered that the joint and several demurrer of said defendants to the supplemental bill herein be set down for hearing on 8th March, 1879, at 11 o'clock a. m., and that complainants be notified.

192 *Continuance.*

Extract from the Minute-, November Term, 1879.

MARIE P. EVANS *et als.*
vs.
D. URQUHART *et als.* } 7672.

MARCH 8TH, 1879.

By consent of counsel the demurrer herein assigned for argument this day is continued till 22nd instant, at 11 o'clock a. m.

193 *Continuance.*

Extract from the Minutes, November Term, 1878.

MARIE P. EVANS
vs.
DAVID URQUHART *et als.* } 7672.

MARCH 22ND, 1879.

By consent of counsel the demurrer herein fixed for hearing this day is continued to the 29th instant, at 11 a. m.

194 *Demurrers, etc., Submitted.*

Extract from the Minutes, November Term, 1879.

MARIE P. EVANS & HER HUSBAND
vs.
DAVID URQUHART *et als.* }

MARCH 29TH, 1879.

This cause came on to be heard on the joint and several demurrer of Mrs. Widow Lapeyre *et als.*, to the supplemental bill herein, and the same having been argued by J. A. Campbell and T. Gilmore & Sons for demurrants, and J. R. Beckwith for the complainants, the court took time to consider.

195 *Demurrer Sustained as to Lapeyre.*

Extract from the Minutes, April Term, 1879.

MARIE P. EVANS *et als.*
vs.
DAVID URQUHART *et als.* } 7672.

MAY 10TH, 1879.

This cause came on to be heard on the joint, and several demurrer of Mrs. Widow Lapeyre and others to the supplemental bill herein and was argued by counsel. On consideration thereof it is ordered, adjudged, and decreed that said demurrer be sustained, and that said supplimental bill be dismissed as to said Mrs. Widow Lapeyre, Albert Lapeyre, and Louise Lapeyre, wife of Francis J. Gasquet, and said Francis J. Gasquet.

196 *Order Allowing Time to Amend.*

Extract from the Minutes, April Term, 1879.

MARIE P. EVANS *et als.*
vs.
DAVID URQUHART *et als.* } 7672.

MAY 12TH, 1879.

On motion of J. R. Beckwith, solicitor for complainants, it is ordered by the court that the entry herein made on 10th instant be so modified as to allow said complainants until the rule day in June, 1879, to amend their pleadings.

197 *Motion and Order. Filed 23rd May, 1879.*

MARIE P. EVANS *et al.*
vs.
DAVID URQUHART *et al.* } No. 7672. In Equity.

On motion of J. R. Beckwith, solicitor for complainants, it is ordered that the time allowed to complainant to amend her bill be extended until the 20th June, 1879.

198 *Amendment to Supplemental Bill. Filed 16th June, 1879.*

MARIE P. EVANS *et al.*
vs.
STATE NATIONAL BANK OF NEW ORLEANS *et al.* } No. 7672. In Equity.

To the honorable the judges of the circuit court of the United States:

And now come the said complainants herein and, insisting now and at all times hereafter that the said supplemental bill of com-

plainant herein was and is in all things sufficient, and that in right the said defendants should be compelled to make answer thereto, and that the said demurrer was and is not well taken, by leave of the court do amend their said supplemental bill of complaint filed herein on March 13th, 1878, by inserting therein on page 22 thereof, after the words charging that the said Lapeyre "participated as an agent or officer of the corporation in the unjust taking of the property of the said Stephen D. Linton and converted it to the use of the said bank — retained a portion thereof in his possession," the following averment and words: "and converted the same or the proceeds thereof wrongfully to his own use and claimed and pretended that the same was his property; that he so held and had possession thereof at the time of his death, and that, as the heirs of the said J. M. Lapeyre, his said heirs, defendants herein, have come into possession thereof with the estate of the said Lapeyre, deceased, and wrongfully pretend and claim that your oratrix has no right or interest in said succession or claim against the same by reason of the fact that her said property is in the possession of said heirs by reason of the wrongful act of the said J. M. Lapeyre; that your oratrix has no means of determining or ascertaining the exact value or amount of said property so converted to his own use by the said Lapeyre, deceased, and prays the assistance of this hon. court in this behalf, and that the said defendants, the said heirs of the said J. M. Lapeyre, may be compelled to account to your oratrix therefore and be decreed to pay the full sum so ascertained over to your oratrix."

199

(Signed) J. R. BECKWITH,
Sol. & Counsel for Comp't.

200 *Motion and Order. Filed 22nd November, 1879.*

MARIE P. EVANS and HUSBAND
vs.
D. URQUHART and Others. } No. 7672. In Equity.

On motion of J. McConnell, of counsel for The State National Bank of New Orleans, one of the defendants herein, it is ordered that the demurrer, plea, and answer of the said bank, filed on the 3rd of June, 1878, to the original and supplemental bills of complaint be allowed to stand as a demurrer, plea, and answer to those bills as amended by the amendment herein filed on the 16th of June, 1879, and that the complainant be notified thereof by service upon her counsel, J. R. Beckwith, Esq., of a copy of this order.

201 *Notice and Order. Filed 25th November, 1879.*

MARIE P. EVANS & HUSBAND
vs.
DAVID URQUHART *et al.* } No. 7672. In Equity.

On motion of J. R. Beckwith, solicitor for complainants, it is or-

dered that the order setting down the several pleas of the defendants in this cause be revoked, and that the complainant- have leave to take issue of fact thereon by replications.

202 *Replication to Plea of State National Bank. Filed 25th Nov'r,* 1879.

MARIE P. EVANS *et al.*
vs.
DAVID URQUHART *et al.* } No. 7672. In Equity.

Replication to the pleas of the State National Bank of New Orleans.

These repliants, saving and reserving unto themselves all and all manner of exception to the manifold insufficiencies of the said answer, for replication thereunto say that — will aver and prove said bill to be true, certain, and sufficient in law to be answered unto, and that said plea of said defendant is uncertain, untrue, and insufficient to be replied unto by these replicants; without this, that any other matter or thing whatsoever in said answer contained material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants can and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and — said bill they have already prayed.

(Signed) J. R. BECKWITH,
Solicitor and Counsel for Complainant-.

203 *Replication to Plea of David Urquhart. Filed 25th November,* 1879.

MARIE P. EVANS *et al.*
vs.
DAVID URQUHART *et al.* } No. 7672. In Equity.

Replication to plea and amended plea of David Urquhart.

These repliants, saving and reserving unto themselves all and all manner of exception to the manifold insufficiencies of all said answer, for replication thereunto say that they will aver and prove said bill to be true, certain, and sufficient in law to be answered unto, and that said plea of said defendant is uncertain, untrue, and insufficient to be replied unto by these replicants; without this, that any other matter or thing whatsoever in said plea contained material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants can and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and — said bill they have already prayed.

(Signed) J. R. BECKWITH,
Solicitor and Counsel for Complainants.

204 *Order to Set Down Demurrer for Hearing. Entered 5th December*, 1879.

MARIE P. EVANS *et al.*
vs.
DAVID URQUHART *et al.* } No. 7672. In Equity.

The clerk of the court will please set down for hearing in the order book the demurrers of The State National Bank, defendant.

(Signed) J. R. BECKWITH,
Sol. for Compl.

205 *Motion and Order. Filed 17th December*, 1879.

MARIE P. EVANS and HUSBAND
vs.
D. URQUHART *et als.* } No. 7672. In Equity.

On motion of Jas. McConnell, of counsel for the State National Bank of New Orleans, it is ordered that Saturday, the 17th January, 1880, at 11 a. m., be assigned for hearing argument on the demurrer to the bill and supplemental bills of complainant, and that J. R. Beckwith, Esq., complainants' counsel, be notified thereof.

206 *Demurrer Submitted.*

Extract from the Minutes, November Term, 1879.

MARIE P. EVANS *et als.*
vs.
DAVID URQUHART *et als.* } 7672.

JANUARY 17TH, 1880.

The demurrer of the State National Bank of New Orleans to the original and supplemental bills was called.

Present: J. R. Beckwith, for complainants; J. McConnell & H. B. Kelly, for demurrant.

And thereupon the matter was submitted to the court on briefs to be furnished on or before Saturday, 24th instant, at 11 a. m.

207 *Demurrers Overruled.*

Extract from the Minutes, November Term, 1880.

MARIE P. EVANS *et als.*
vs.
DAVID URQUHART *et als.* } 7672.

APRIL 8TH, 1881.

This cause came on to be heard on the demurrer of the State National Bank of New Orleans to the bill and supplemental bills of complaint, and was argued by counsel. On consideration whereof it is ordered that the demurrer be overruled

208 *Answer of Widow Lapeyre & Others. Filed 20th April*, 1881.

MARIE P. EVANS *et al.*
vs.
D. URQUHART *et al.* } No. 7672. In Equity.

The joint and several answers of Angelina Avegno Lapeyre and her minor children, George and Martial Lapeyre; also of Albert Lapeyre, who is of full age, and Francis J. Gasquet & his wife, defendants in the bill filed in this court against them of the title aforesaid and standing on the chancery docket as No. 7672.

The said Angelina Avegnor Lapeyre appearing for herself and her minor children as their tutrix, and the others for themselves, as beneficiary heirs of J. M. Lapeyre, these defendants severally answer that J. M. Lapeyre, the husband of Angelina Avegno Lapeyre and father of the children aforesaid except F. J. Gasquet, was president of the Louisiana State Bank prior to the year 1866, and in the year 1866 resigned his office, and after occasional absences removed to the Empire of France in the year 1870 and died in France about the year 1871.

These defendants further answer that during the years of his absence in France all of his children above named lived — him
209 in France, and only returned to the State of Louisiana after his death, in the year 1871.

For further answer the defendants say that they have — knowledge or information of the possession or occupation of the property described in the bill as the Quantico plantation at any time from the year 1861 till this date or before that time, and cannot answer as to the right or claim of the plaintiffs or either one of them, or of Madison Wells, or of David Urquhart, or of the Louisiana State Bank, nor as to the products of that plantation during any portion of the time spoken of in the bill since or before the death of Stephen D. Linton, nor what was done with the products or any portion of them, nor have they any knowledge or information of the acts and doings of any of the plaintiffs or of the defendants in respect to the occupation, possession, or use of the plantation, its products, or its equipments, stock, or materials, nor do they know who were owners of the same, nor of any right or title thereto, nor have they any belief in respect to the same.

These defendants disclaim all connection with any of the matters and things charged in the bill & any connection with the parties and their acts as set forth therein; and, for further answer,
210 these defendants say that it is not true that J. M. Lapeyre ever claimed to have any right, title, claim, or interest of any kind or description in the Quantico plantation, or in the products of that plantation, or in the disposition of any of those products by Madison Wells, David Urquhart, or any other person named in the bill or not named in the bill, nor was he in any manner concerned in any trespass or appropriation of property connected therewith, nor is there any foundation in fact for the charge in the amended

bill that he converted any portion of the proceeds to his own use or pretended that the same was his property, or that he held the same at his death, and that they came to the possession of his heirs, nor is there the least foundation in fact for any allegation that these defendants pretend to hold property of the plaintiffs as their own.

The amendment to the bill was made after a demurrer had been sustained against it because these defendants were improperly made parties to the same, and that there was no reason to make them parties in law or in equity, and that it was wrongful to bring
211 them wantonly and without necessity in court, and then the inventive powers of the plaintiffs were set at work and their charges are the fruit of their employment, and these charges are all denied.

These defendants deny that J. M. Lapeyere, deceased, during his life in any manner was chargeable with any of the acts complained of in the original bill, nor was he charged by these plaintiffs to be. These defendents aver that he was an entire stranger to them, and is not in any manner accountable for any act done or for any property lost by the complainants even if it should appear that anything was done to their prejudice or that they had any property to lose.

These defendents pray that the demurrer heretofore filed may be held as applicable to the bill as amended, and they insist that there is nothing averred therein which gives any claim to the plaintiffs to any account from them.

These defendants ask the benefit of their demurrer to the amended bill.

212 These defendants say that the said Lapeyre ceased to have connection with the Louisiana State Bank in 1866, and that he continued in life till 1871; that his succession was opened in this city, and that the same has been administered in the second district court of this parish.

These defendants claim the benefit of the prescription as established in the civil code of the State of one year, three years, five years, and ten years as fully as they are applicable to any facts apparent in the case, and now, having demurred, pleaded, and answered, pray to be hence dismissed with costs.

(Signed) T. GILMORE & SONS AND
(Signed) J. A. CAMPBELL, *Of Counsel.*

CITY OF NEW ORLEANS,
Parish of Orleans, State of Louisiana.

Personally came before me Angelina Avegno Lapeyre, as
213 tutrix and for herself; Albert Lapeyre, Francis J. Gasquet, and Louise Lapeyre, who *who* severally made oath that this answer is true in substance and matter of fact.

(Signed) VVE. ANGELINE LAPEYRE.
(Signed) A. T. B. LAPEYRE.
(Signed) F. J. GASQUET.
(Signed) LOUISE LAPEYRE GASQUET.

Sworn to and subscribed before me, at New Orleans, La., this 30th January, 1880.

(Signed) W. J. CASTELL, *Not. Pub.*

214 *Motion to Rescind Order of Dismissal. Filed 6th June,* 1881.

MARIE P. EVANS *et al.*
vs.
DAVID URQUHART *et als.* } No. 7672.

On motion of J. R. Beckwith & E. H. Farrar, solicitors for complainants, and on suggesting to the court that Monday, the 6th day of June, being the rule day in that month, and being the proper day in which to file a replication to the answer herein filed of Angelina Avegno Lapeyre and her minor children, George & Martial Lapeyre, and Francis J. Gasquet and wife, the said answer having been filed on the 20th day of April, 1881, complainants' counsel went into the clerk's office to file their said replication, when it was discovered that about 10 o'clock on the same morning Judge Jno. A. Campbell, one of the solicitors of the said defendants, had, in violation of the rules and practice of this court, entered in the chancery order book an order dismissing complainants' bill, and that the clerk of said court, on account of said order, refused to file said replication—

It is ordered by the court that said defendants do show cause, on Saturday, the 11th day of June, 1881, at 11 o'clock, why said order of dismissal should not be rescinded and the said replication filed as of Monday, the 6th of June.

215 *Motion to Rescind Fixed for Trial.*

Extract from the Minutes, April Term, 1881.

MARIE P. EVANS *et als.*
vs.
DAVID URQUHART *et als.* } 7672.

JUNE 6TH, 1881.

On motion of J. R. Beckwith & E. H. Farrar, it is ordered by the court that said defendants, Mrs. Angelina Avegno Lapeyre, her minor children, George — Martial Lapeyre, and Francis J. Gasquet and wife, show cause, on Saturday, 11th instant, at 11 a. m., why the order dismissing complainants' bill this day entered in the chancery order book should not be rescinded and complainants' replication filed as of Monday, June 6th, 1881, on the ground filed.

216 *Affidavit of E. H. Farrar. Filed 11th June,* 1881.

MARIE P. EVANS *et al.*
vs.
DAVID URQUHART *et als.* } No. 7672.

E. H. Farrar, being sworn, deposes and says that he is one of the solicitors of the complainants in this cause, and that by an arrange-

ment between him and his co solicitor, Mr. J. R. Beckwith, he was charged with the duty of filing the replication to the answer of A. A. Lapeyre *et als.*, which was due and to be filed on the rule day in June; that affiant drew the accompanying replication, and on Monday, the 6th day of June, being the rule day in June, at about 2 and ¾ o'clock p. m., went to the clerk's office to file the same, when he discovered that on the same day an order had been entered by direction of one of solicitors of the defendants dismissing the bill under rule 66 of the rules in equity prescribed by the Supreme Court; that he thereupon demanded of the clerk that this replication should be filed and the said order stricken from the chancery order book, both of which things the clerk refused to do.

(Signed) E. H. FARRAR.

Sworn to and subscribed before me this 11th day of June, 1881.

(Signed) T. A. WOOLFLEY,

Comm'r U. S. Circuit Court, Eastern District af Louisiana.

217 *Rule to Rescind Absolute.*

Extract from the Minutes, April Term, 1881.

MARIE P. EVANS *et als.* vs. D. URQUHART *et als.* } 7672.

JUNE 17TH, 1881.

This cause came on to be heard on the motion of the complainant to rescind order entered in chancery order book on 6th June, 1881, dismissing complainants' bill, &c., and was argued by counsel.

On consideration whereof it is ordered that the rule be made absolute, and that said order of 6th June, 1881, dismissing bill of complaint herein, be rescinded and complainants' replication to the answer filed by Angiline Avegno Lapeyre and her minor children, George and Martial Lapeyre, and Francis J. Gasquet and wife, be filed.

218 *Replication to Joint Answer of A. A. Lapeyre et als. Filed 11th June*, 1881.

MARIE P. EVANS *et al.* vs. DAVID URQUHART *et als.* } No. 7672. In Equity.

The replication of Marie P. Evans & W. R. Evans, her husband, to the joint answer of Angelina Avegno Lapeyre and her minor children, George & Martial Lapeyre, and Francis J. Gasquet and his wife.

These repliants, saving and reserving to themselves all advantage of exception which may be had to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendants, for replication thereto saith that they do aver, maintain, and will prove their

said bill to be true, certain, and sufficient in law to be answered unto by the said defendants, and that the answer of said defendants is uncertain, evasive, untrue, and insufficient in the law to be replied unto by this repliant; without that, that any other matter or thing in said answer contained materially or effectually in the law to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

(Signed) J. R. BECKWITH,
(Signed) E. H. FARRAR, *Sol'rs.*

219 *Answer of the State National Bank with Answers to Interrogatories, and Exhibits A, B, C, D. Filed 7th November*, 1881.

MARIE P. EVANS and HER HUSBAND
vs.
D. URQUHART *et al.*
} No. 7672. In Equity.

The answer of The State National Bank of New Orleans, one of the defendants, to the bill of complaint and supplemental bills of complaint of Marie P. Evans and her husband, William R. Evans, complainants.

This defendant, now and at all times hereafter saving to itself all and all manner of benefit or advantage of exception or otherwise that can or might be taken to the many errors, uncertainties, and imperfections in the said bills contained, and not waiving or abandoning the demurrer and pleas herein heretofore filed, but relying and insisting thereon, and herein and hereby re-averring and reiterating all the averments and details in said pleas contained as fully as if they were herein specifically incorporated and set forth, for answer to said bills and supplemental bills, or to so much
220 thereof as this defendant is advised it is material or necessary for it to answer unto, answering, saith:

This respondent admits it to be true, as in the original bill averred, that Stephen D. Linton in the bill mentioned was before, at, and during the several dates and times stated the owner of the Quantico plantation in the bill described, and that he continued so to be until his death, which respondent is informed and believes occurred on or about the 15th of December, 1867; but this respondent does not admit — was continuously the possessor of the said plantation from the dates and times averred in the bill to his death, in December, 1867, but is informed and believes, and therefore avers, that from about the month of March, 1861, until the date of said Linton's death, in December, 1867, the said Quantico plantation was continuously in the possession of the sheriff of the parish of Rapides or of his keepers, under writs of execution in his hands, to which more specific reference will be hereinafter made.

For answer to so much of said original bill as relates to an alleged

will and testament of said Linton of the 20th of December,
221 1863, devising and bequeathing all of his real and personal estate to the complainant, Marie P. Evans, and to the alleged probate of said will before the proper tribunal of the parish of Rapides, and to the alleged recognition by the said court of the said Marie P. Evans as universal legatee and sole heir of said Linton, respondent adopts and reiterates for answer thereto the plea to said original bill filed herein on the 3rd of April, 1876, and the amendment thereto filed May 18th, 1876, and remaining of record in the cause, and which respondent makes part of this answer.

Respondent is informed and believes that on or about the 15th of March, 1861, the sheriff of the parish of Rapides, under a writ of seizure and sale to him addressed by the then fourth district court of New Orleans in the suit No. 14665 of the docket, entitled David Urquhart *vs.* Stephen Duncan Linton, seized and took possession of said Quantico plantation; and respondent is informed and believes, and so says, that the process under which the said sheriff seized said plantation was not an unauthorized judicial process, but was regu-
larly and lawfully issued and regularly and lawfully exe-
222 cuted by the sheriff; but this respondent avers that, be this as it may, it is in no way accountable to complainant for old alleged acts of the said Urquhart in the premises or of the sheriff or of his deputies, respondent not being in any way a party to said proceeding.

For answer to so much of said bill as avers that during the alleged occupancy of said plantation by said Urquhart and on or about the 21st of August, 1863, the State National Bank of New Orleans, then known as the Louisiana State Bank, joined with the said Urquhart in the possession and occupancy of the said plantation and continued in such occupancy and possession until January, 1869; and that, during such alleged joint occupancy, stock, farming utensils, cotton, and other property connected therewith came into the possession and under the control of said alleged joint occupants to the value of seven hundred and fifty thousand dollars, and that during the said alleged joint occupancy by the said defendants the said property to the value of seven hundred thousand
dollars and other property of the value of seven hundred
223 and fifty thousand dollars, alleged to have been under the control and in the possession of said Urquhart prior to said alleged joint occupancy, the whole alleged to amount to one million four hundred thousand dollars, was used and disposed of by said defendants and the proceeds thereof retained and kept or otherwise misappropriated; and that during the period of time during which the said defendants are so alleged to have had the control and possession of said property they had the entire and exclusive control of the same and exercised the rights and privileges of mortgagees in possession of the land and premises, and as such entered into and engaged in the business of raising crops of cotton and other farming and planting business, from which they realized large sums of money, averred by complainants, upon information and belief, to amount to one hundred and fifty thousand dollars; and that

the said defendants pretend that they are and were entitled to the use of said property and the retention of the proceeds of the sales of the same as the holders of certain mortgage notes made by the said Stephen D. Linton, and that by virtue thereof, without the
224 adjudication of a proper legal tribunal, giving the said defendants the right of possession of said property, they were entitled to enter into the entire and exclusive control and occupancy of the said land and premises and the appropriation of the property situated therein and the product of the said land during the occupancy of said defendants, this respondent answers and says that it is true that the Louisiana State Bank claimed and its successor, the State National Bank, claimed and claims still that they were, as holders of certain notes of said Stephen D. Linton, secured by mortgage on the Quntico plantation, they were and are entitled, through the courts, to enforce their rights as mortgagees according to law and not otherwise; and this respondent says that as to the late Louisiana State Bank and its successor, the State National Bank of New Orleans, all of said averments are false from beginning to end, in every particular and in every sense, and that there is not a word of truth in them; but the truth of the matter in regard to the relation of the said Louisiana State Bank and the said State National Bank of New Orleans to the said Stephen D. Linton and the said Quantico plantation and the said Marie P. Evans is as will be hereinafter set forth.

To the first supplementary bill of complainant herein filed
225 on the 3d of June, 1876, and to the original bill this respondent filed on the 3d of March, 1877, a plea, all the averments of which he now reiterates as part of his answer to the said original and first supplemental bill; and respondent is advised that no further answer is required to said original and supplemental bills than said plea and the foregoing part of this answer, and he prays that the said plea, which is on file and of record in the cause, be allowed to stand as a part of the answer of this respondent to the stating parts of said bills and first supplemental bill, the interrogatories in said bills contained to be hereinafter answered.

And this respondent, further answering, says that to the second supplemental bill herein filed on March 13, 1878, as well as to the original and first supplemental bills, this respondent, on the 3d of June, 1878, filed a demurrer, plea, and answer, all the averments and denials of which respondent now reiterates, and respondent prays that said demurrer, plea, and answer now on file and of record in the cause be allowed to stand as part of respondent's answer to the original and first and second supplemental bills.

Further answering, this respondent says that the truth of the matter in regard to the relation of the late Louisiana State
226 Bank and of its successor, the State National Bank of New Orleans, to the late Stephen D. Linton, the Quantico plantation, and Marie P. Evans is as follows:

On the 27th of December, 1859, the said Stephen Duncan Linton appeared before Theodore Guyol, a notary public for the parish of Orleans, and acknowledged himself to be indebted to the firm of

W. and D. Urquhart, of New Orleans, in the sum of one hundred and thirty thousand dollars, borrowed money, for which he furnished his twelve promissory notes for sum of $10,833.33⅓, each drawn to the order of and endorsed by himself, dated 27 December, 1859, payable, respectively, on the 10th of January, 10th of February, and 10th and 15th days of March in each of the years 1861, 1862, and 1863, with interest from maturity at 8 per cent. per annum, and in case it should become necessary to institute legal proceedings for the recovery he bound himself to pay the fees of the attorney employed for that purpose, which were fixed at five per cent. on the amount sued for, and to secure the payment of the notes with eventual interest he mortgaged to W. and D. Urquhart, to enure to the benefit of all future holders of the notes, not only the Quantico plantation described in the bill, with all the
227 buildings and improvements thereon, the engines, machinery, apparatus, stock, cattle, horses, mules, utensils, and implements of husbandry on the plantation, but also one hundred and ninety-three slaves.

On the 15th of March, 1861, David Urquhart brought suit for executory process in the then fourth district court of New Orleans against Stephen D. Linton on the three notes which had then matured, viz., the notes maturing on the 13th of January, 13th of February, and 13th of March, which had been protested for non-payment at maturity, and obtained on the same day an order of seizure and sale of the mortgaged property for so much cash as would pay and satisfy the seizing creditors' demand in principal, interest, and costs and on such terms of credit as would correspond with the maturities of the remaining notes set forth in the act of mortgage.

Respondent is informed and believes, and therefore says, that under the writ of seizure and sale in said suit the sheriff of the parish of Rapides seized the mortgaged property and advertised it for sale according to law, but that the sale was stayed by the passage of a stay law by the then Legislature of the State, but that the sheriff, as in duty bound, maintained the possession and
228 control of the property under seizure by having a keeper thereon; that while the execution of said writ of seizure and sale in the hands of the sheriff was thus suspended the court-house of the parish of Rapides was destroyed by fire, with all the records, both of the sheriff and of the clerk of said parish, including the said order of said seizure and sale, thereby rendering it impossible for the sheriff either to execute or make return upon the same, and that matters remained in this condition until Oct. 6th, 1865, when, upon a supplemental petition being filed bringing these matters to the knowledge of the court, an *alias* order of seizure and sale of the mortgaged property, except the slaves, who had been emancipated, was granted, and under an *alias* writ the property was again advertised to be sold, but on the 21st of November, 1865, and before sale, the writ was returned by order of plaintiff's attorney, and on the 20th of Oct., 1866, on motion of plaintiff's attorney, the suit was discontinued.

Respondent says that on the face of the proceedings in said suit

nothing appears to have been done therein that was not clearly according to law for the enforcement of the rights of the plain-
229 tiff therein as holder of the notes of Stephen D. Linton, secured by mortgage on the Quantico plantation, described in the petition; but respondent further says that, be that as it may, neither the Louisiana State Bank nor its successor, the State National Bank of New Orleans, are in any way responsible or accountable to any one for anything done therein, as they were no parties thereto, either directly or indirectly. At the time of the institution of said suit for executory process on the 15th of March, 1861, by David Urquhart against Stephen D. Linton, the Louisiana State Bank had discounted and held as owner three of the notes of Stephen D. Linton for $10,833.33⅓ each, secured by mortgage on the Quantico plantation, described in the act before Theo. Guyol, notary public, of the 27th of December, 1859; and also held as collateral, to secure an indebtedness of W. & D. Urquhart to said bank, five of said mortgage notes of said Stephen D. Linton for $10,833.33⅓; but respondent says that at the time of the institution, on the 15th of March, 1861, of said executory proceedings by David Urquhart against said Stephen D. Linton and the Quantico plantation upon the three of said mortgaged notes, described in said act before Theo. Guyol, notary public, which had then matured, none of the said notes so as afore-
said held by said bank had matured, the maturities of the
230 three of said notes held by said bank being respectively 10–13 February, 1862, 10–13 March, 1862, and 15–18 March, 1862, and the maturity of the five notes so as aforesaid held as collateral by said bank being 10–13 January, 1862, 10–13 January, 1863, 10–13 February, 1863, 10–13 March, 1863, and 15–18 March, 1863.

Respondent says that prior to the 17th of June, 1863, no proceedings had been taken by said Louisiana State Bank to enforce the payment of said notes by enforcement of the mortgages against the Quantico plantation, but that on that day the bank continued to hold said notes by the titles above stated.

Respondent says that on the said 17th day of June, 1863, and prior to the 21st of August, 1863, at or about which time it is alleged in the said original bill herein that the Louisiana State Bank joined with the said David Urquhart in the occupancy and possession of said Quantico plantation and came into possession jointly with said Urquhart of cotton and other property belonging to said plantation of the value of over one million four hundred thousand dollars, which the said bill avers they converted to their own use, all the assets of said bank, including the said eight notes of Stephen D.
Linton, secured by mortgage on the Quantico plantation,
231 were taken out of the possession and control of the officers, directors, and stockholders of said bank and the entire control and management of said bank placed in the hands of a military commission by force of a military order, of which the following is a copy.

"Head-Quarters Dep'm't of the Gulf, 19th Army Corps.

BEFORE PORT HUDSON, 11*th of June*, 1863.

Extract.

SPECIAL ORDERS No. 138.

* * * * * * *

Satisfied from the report of the Louisiana State Bank made to the provost-marshal general, in pursuance of special order No. 87, that the said bank is insolvent, the commanding general hereby appoints Colonel Charles C. Dwight, 160th New York Volunteers; A. Mitlenberger, and J. M. Lapeyre, commissioners to effect the liquidation of said Louisiana State Bank, to convert into cash as speedily as may be all the assets of that corporation, including the sums that may have remained unpaid by stockholders upon their respective shares of the capital stock, and after providing for the payment of the bill-holders to distribute the same as now provided by law in case of insolvencies of individuals.

The commissioners herein named will take possession of
232 the effects of the Louisiana State Bank and enter on the discharge of their duties immediately.

By command of Maj. Gen'l Banks:

(Signed) RICHARD B. IRWIN,
A. A. General.

Official copy.

(Signed) HENRY L. PIERSON, JR.,
Captain and A. A. G.

Respondent avers that the proceedings had by the board of directors of the Louisiana State Bank when the said order was communicated to them are correctly set forth in the record of the proceedings of said board, Book E, folios 235, 236, and 237, as follows:

"Special meeting of Wednesday, 17 June, 1863.

Present: J. M. Lapeyre, pres'd't; Blanc, Brother, Brugin, Gelpi, Kennedy, and Olivier.

The president laid before the board the following order handed to him yesterday; which was read and ordered to be spread upon the minutes."

(Here follows a copy of the military order No. 138 as given above.)

Whereupon the board unanimously declared that while submitting to the above order, which they have no power to resist, they deem it unjust, oppressive, and ruinous, and so solemnly protest against it on behalf of the stockholders.

233 An inventory of the assets of the bank was ordered to be made, with a view to hand the same to the commissioners appointed by the order, and the president was at the same time requested to exert all honorable means to have the above order

rescinded or so modified as to allow the liquidation of the bank to be effected in a manner less disastrous than the one pointed out by the order.

After which the board adjourned.

(Signed) J. M. LAPEYRE, *President.*

(Signed) L. BERNARD, *Cashier.*

Respondent avers that under said military order of the 11th of June, 1863, the military commission thereby appointed on the 17th of June, 1863, took possession of all of the assets of the said bank and assumed entire control and management of all its affairs, and continued in the exercise of such control and management until the 3d day of February, 1866, when the assets and management of said bank were surrendered to the directors and stockholders thereof.

Respondent shows that most of the alleged acts of said bank complained of in said bills of complaint are averred therein to
234 have occurred at dates which are between the 17th of June, 1863, when the bank was taken possession of by the said military commission, and the 3rd of February, 1866, when it was surrendered to the directors and stockholders.

Respondent does not believe and has no reason to believe that any of the losses averred in the bill of complaint to have been sustained by the owner of Quantico plantation during the period from the 17th of June, 1863, to the 3d of February, 1866, if sustained at all, were occasioned by the acts or neglect of the military commission in charge of the affairs of the bank, but avers, upon information and belief, that the present attempt to hold the State National Bank of New Orleans, as successor of the Louisiana State Bank, liable for said alleged losses averred to have been sustained during the period during which the affairs of the Louisiana State Bank were under the control and management of said military commission is made in pursuance of a fraudulent scheme to unlawfully extort money from respondents by means of tedious and vexatious litigation.

Respondent says that as to the larger portion of said alleged
235 losses it is manifest that the complainant Marie P. Evans knew before this suit was brought that respondents were in nowise liable therefor from the fact that before the board of commissioners of claims appointed under the act of Congress of March 3d, 1871, she testified on the 10th of November, 1873, under oath, as follows:

"Mr. Linton had indorsed some notes and those notes were in possession of W. and D. Urquhart, of New Orleans. They held, of course, a privilege on his crop and plantation, and at the time of secession—I think the first winter, in 1861—Gov. Moore issued an order that no cotton should be brought into New Orleans; that it was in danger of becoming a bait for the enemy, or some such nonsense, and hence all cotton remained on the plantations. Now, when Gen'l Banks went up Red River there were 1,700 or 1,800

bales of cotton on the place—500 or 600 baled and ready for shipment and the rest partly baled and stacked in houses. * * *

Q. Did Gov. Wells say to you that he had taken from four to five hundred bales of your husband's cotton?

A. Yes, sir; that he had moved it as keeper. * * *

Q. What became of the balance of that cotton?

236 A. It was burned by the Confederates. A personal acquaintance and friend told me himself that he had put the torch to it. I asked him the reason and he said, 'Because you had all been on the plantation a short time before, and when we came back there and found that everything had been left we knew, of course, that what the Federals had protected we had a right to burn.' * * *

Q. Did he burn your dwelling?

A. Yes, sir; they burned all the cabins and negro houses, twenty-four or twenty-six in number, at Quantico, and they burned the dwelling and the cotton houses; they burned everything." * * *

Respondent says that while it has no reason to believe and does not believe that the losses alleged to have been sustained by the owner of Quantico plantation at any time between the 17th of June, 1863, and the 3d of February, 1866, while the military commission had charge and control of the affairs of the Louisiana State Bank, are in anywise attributable to the fault or neglect of said commission, further says that, be that as it may, the State National Bank and the stockholders thereof, against whom relief is sought in this suit, are in nowise responsible for any loss which may be at-

237 tributable to the acts, faults, or neglects of said military commission, for the reason that its predecessor, the Louisiana State Bank, and its stockholders had no control whatever over said military commissioners, who were not their agents, but were placed in charge of the affairs of said bank by an overpowering military force against the solemn protest of the directors of said bank on behalf of the stockholders, whose agents and representatives they were; and respondents say that to hold the bank and its stockholders liable for the management of the affairs of the bank, under such circumstances, would be contrary to natural justice and every principal of law and equity.

And respondent says that the fact that said military commission was in charge of the affairs of the bank from the 17th of June, 1863, to the 3d of February, 1866, in itself constitutes a complete bar to the right of complainants to recover against the State National Bank of New Orleans for any loss or damage alleged to have been caused by the acts of said bank during said period, and respondent hopes it shall have the same benefit of this defense as if it had been specially pleaded in bar of so much of said bills as it is applicable —.

238 Further answering, respondent says that on the 28th of October, 1865, after the occurrences alleged in the bills of complaint whereby it is herein alleged the owner of the Quantico plantation had sustained a loss of over one million four hundred thou-

sand dollars, for which the State National Bank of New Orleans is therein alleged to be liable, Stephen D. Linton addressed to the military commission then in charge of the affairs of the bank a letter, in which nothing is said about the bank being indebted to him on any account whatever, but acknowledges the mortgage debt evidenced by his notes, described in the notarial act of December 27th, 1859, before Theodore Guyol, notary public, and secured by mortgage on the Quantico plantation, and asked for time and that he should be allowed to cultivate the place unmolested, paying as much as he could every year until the debt should be paid, or until he should see that he could not succeed in his undertaking, which proposition was not accepted by the commission.

And respondents further say that after the assets of the
239 bank and its affairs had been surrendered to the management of the stockholders, and long after the occurrences whereby it is averred in the bills of complaint herein the Louisiana State Bank became indebted to Stephen D. Linton as owner of Quantico plantation in a sum exceeding one million four hundred thousand dollars, to wit, on September 7th, 1866, the complainant Marie P. Evans addressed to the stockholders of the Louisiana State Bank a letter, in which no mention whatever is made of the said bank being indebted to Stephen D. Linton in any sum or on any account, but in which the mortgage indebtedness of Linton to the bank in a very large amount is acknowledged. That letter is as follows:

To the stockholders of the Louisiana State Bank.

GENTLEMEN: In behalf of my husband, Mr. S. Duncan Linton, who is ill, and whose curatrix I have been appointed by the tribunal of France, I herein make a proposition relative to the Quantico plantation, on which you hold eight mortgage notes, and taking
240 into consideration the renewed condition of the country I trust you will be generous in your conclusions, as I shall be conscientious in mine.

If the bank agree to take 50 per cent. on the face of these notes, making the whole debt about $40,000, I will assume the payment thus:

First. By organizing the labor which I control completely.

Secondly. By paying nothing the first year, inasmuch as the buildings are destroyed and the wreck of the place is such as to require all I could make the first year to put the place in a responsible condition for this debt.

Thirdly. I agree to bind myself to pay annually the sum of $5,000 until the debt is paid, with such interest as the bank may deem just.

Fourthly. That the bank purchase the place and bind herself to return it to my possession as soon as I pay the debt.

Fifthly. That the bank seize the plantation immediately, thereby securing the present growing crop, and that she bind herself to turn over to me the proceeds of said crop; otherwise I have not the means to touch the place at all.

Hoping this proposition may meet your approbation, gentlemen, I am, most respectfully,

(Signed) MARY PERKINS LINTON.

241 This proposition of Mrs. Linton, now Marie P. Evans, complainant in this cause, was declined on the 20th October, 1866, by a vote of the board of directors of the Louisiana State Bank.

Prior to this, on the 27th of March, 1866, the bank had purchased at sheriff's sale of the effects of W. & D. Urquhart the five of said mortgage notes which the bank had previously held as pledges, as hereinbefore stated, and on the 21st of September, 1866, suit *via ordinaria* on the eight mortgage notes then so acquired and held by the bank, then amounting, in principal and interest accrued, to over a hundred and twenty thousand dollars, had been instituted in the then fourth district court of the city of New Orleans, service of citation was accepted for Stephen D. Linton by Mary Perkins Linton, as provisional administrator of S. D. Linton by appointment of the proper court in France, by which he had been interdicted, and also by P. H. Morgan, Esq., who had his power of attorney. This was the first step taken in the courts by the Louisiana State Bank,

242 as the holder of said mortgage notes, against Stephen D. Linton and the Quantico plantation. There was judgment by default in the suit on the 22nd of May, 1867, which was confirmed on the first of June, 1867.

Under this judgment the Quantico plantation was seized and sold on the 2d of January, 1869, for the sum of sixteen thousand nine hundred dollars, the bank being the purchaser at the said sale.

Subsequently the bank sold the said plantation to Charles L. Robinson and Wm. Hayman, but a suit was instituted to annul the sale to the bank, and the supreme court decided to annul the sale, and the bank was compelled to refund to the said purchasers the amount they had paid.

The plantation was then advertised for sale under proceedings in the succession of said S. D. Linton by J. Madison Wells, Jr., who, as public administrator, had been appointed by the court and was acting as dative testamentary executor of the estate of S. D. Linton, and sold by the sheriff on the 17th of March, 1877, to Charles L. C. Dupuy for the sum of fifty-five hundred dollars, and on the 22d

243 day of March, 1877, Chas. L. C. Dupuy sold the said plantation, with all the buildings thereon and appurtenances thereunto belonging, to Charles L. Robinson for the sum of twelve thousand dollars by an act passed before Theodore Guyol, notary public in this city.

That the complainant herein, the said Marie P. Linton Evans, aided and assisted by her husband & co-complainant, William R. Evans, intervened in the said act of sale last above named, and therein it was declared by them as follows, viz: "And now to these presents came and intervened Mrs. Marie Perkins, widow by first marriage of Stephen D. Linton and now the wife by second marriage of William R. Evans, at present residing in the city, and by whom

she is herein duly and specially assisted and authorized, who, after having read and taken full cognizance of what is above written, declared that in her capacities of widow in community and universal legatee of the said late first husband, the said S. D. Linton, she does hereby approve and to all interests confirm and ratify as well the sale and conveyance herein made by the said Dupuy to the said Robinson of the property above described as the sale and adjudication thereof made by the sheriff of the parish of Rapides to the said
244 Dupuy on the 17th day of the present month in the matter of the succession of the said Stephen D. Linton, hereby wishing and intending that the two sales shall have their full force and effect & shall in all respects be as valid as though she had been a party to and had signed the same as vendor, and moreover renouncing for herself and her heirs in favor of the present owner of said property any and all rights which she may now have or ever had therein, whether as widow in community and universal legatee of the said Stephen D. Linton or otherwise."

And respondent annexes hereto a copy, duly certified, of said act of sale and ratification so made by said complainants before T. Guyol, notary, on the 22nd of March, 1877, and makes the same a part of this answer and markes the same, for greater certainty, as Exhibit A.

And, further answering, respondents say that Stephen D. Linton, named in complainants' original and supplemental bills, died, as averred in the original bill, in the city of Paris, France, on or about the 15th day of December, 1867, and his succession was duly opened in the proper court in the parish of Rapides, Louisiana, on
245 the 11th of March, 1868, and numbered 1171 on the docket of said court, on which day a petition was filed in said court by Coleman D. Calvit setting forth the death as aforesaid of the said Linton and alleging that he died intestate and left property and effects in said parish of Rapides and also a large number of creditors in the State, and that an administration was necessary, and praying that said Calvit should be appointed curator of said succession, and that an inventory and appraisement of the effects of said succession should be made according to law; that upon notice being given of said application an opposition thereto was filed by Jules A. Blanc, president of the Louisiana State Bank, alleging that said bank was a large creditor of said succession, and that said Calvit was not a creditor thereof, and praying that said Blanc should be appointed curator of said succession in preference to said Calvit.

And respondent further says that afterwards, to wit, on the 8th of October, 1868, on the application of said Blanc, the said court appointed John H. Ransdell provisional curator and guardian of the property of said succession and ordered him to be put
246 into possession of the same, and that he was so put into possession.

That subsequently, on the 17th of December, 1868, on the petition of the Louisiana State Bank and others, claiming to be creditors of said succession, an inventory and appraisement was made of the property of the succession by order of court and duly returned and

filed in the mortuary proceedings, from which it appears that the entire assets of said succession were appraised at the value of seventeen thousand one hundred dollars.

And respondent further says that other proceedings were thereafter had in the matter of the administration of said succession not material to be stated here, and that on the 14th of September, 1870, a petition was filed therein by Orestes K. Hawley, public administrator of said parish of Rapides, setting forth that said succession was a vacant one, and that there was a contest then pending in said court for the curatorship thereof, and praying that he, the said Hawley, should be appointed administrator thereof as provided by law, and that he be put in possession of the property and effects of said succession and for an inventory to be taken, and that
247 thereupon he was so appointed and put into possession and an inventory was taken on the 20th of September, 1870, and duly returned and filed in the mortuary proceedings, and that from said inventory it appears that the entire assets of the said succession were appraised at the value of twenty-seven thousand six hundred dollars.

And this respondent further says that subsequently, to wit, on the 3rd of May, 1871, the said administrator filed a tableau of debts acknowledged to be due by said succession, amounting, in principal, to the sum of $121,046.66⅔, with a large amount of accrued interest thereon, of which amount the sum of $86,666.66⅔, with large arrearages of interest, is set forth as due by said succession to the Louisiana State Bank.

And this respondent avers the truth to be, as appears from said inventories and appraisements and said tableau of debts, that said succession was heavily insolvent, if not "twenty times insolvent," as it has since been pronounced to have been by the supreme court of Louisiana, and that therefore there was and could be nothing coming from it to any heir of Stephen D. Linton, testamentary
248 or at law.

And this respondent further says that from the time of the filing of the said tableau of debts as aforesaid, on the 3d of May, 1871, various proceedings were had in said court in due course of administration not necessary to be specifically stated here, till the 9th of January, 1872, when a petition was filed in behalf of Mary P. Linton and Charlotte P. Linton, claiming, as sisters of said deceased, S. D. Linton, to be his heirs-at-law, and praying to be recognized as such and to be allowed to accept said succession with benefit of inventory, and also praying that the appointment of said public administrator to administer upon said succession should be vacated and that their attorney, T. C. Manning, should be appointed to take charge of said succession in their names; which application was refused.

And this respondent further says that, pending the proceedings, as aforesaid, upon the said petition of the said sisters of said Linton, J. Madison Wells, Jr., was appointed public administrator for the parish of Rapides, vice O. K. Hawley, and became party to the pro-

ceedings in his stead on the 7th of July, 1873, and succeeded
249 the said Hawley in the possession and administration of the property and assets of said succession.

And this respondent further says that while the said Wells was as aforesaid, in actual possession and administration of said succession, to wit, on the 25th of May, 1875, a certain paper, dated at Matamoras, in the year 1863, was, upon the petition of Henry Perkins, probated as the last will and testament of Stephen D. Linton before H. L. Daigre, parish judge of the parish of Rapides, wherein his wife, Mary Linton, is constituted the sole and exclusive inheritor of all property he may leave at the time of his death.

And respondent further says that on the petition of the said Mary P. Linton and of her husband by second marriage, William R. Evans, *ex parte*, and without notice or citation to said public administrator then in the actual possession and administration of said succession, judgment was rendered by said N. L. Daigre, parish judge, ordering the said Marie P. Evans, as universal legatee, to be put into possession of said succession, which judgment was rendered on the 13th of July, 1873, and which was afterwards declared null and void and the said Marie P. Evans enjoined from taking possession thereunder by judgment of court rendered on the 24th day of October, 1876, on the petition of
250 the said J. Madison Wells, Jr., public administrator; and respondent further says that on the petition of J. Madison Wells, Jr., as public administrator, he was, by judgment of court of the 15th of March, 1876, appointed dative testamentary executor under the will, which had been probated as such; and respondent further says that it was while he was in the actual and lawful administration of said succession as aforesaid that, in due course of administration, the said Quantico plantation was sold to Charles L. C. Dupuy, as above set forth, which sale was subsequently ratified and confirmed by the said complainant, Mrs. Marie P. Evans, by act before T. Guyol, notary public, on the 22nd of March, 1877, as hereinbefore stated.

And this respondent, further answering, specially denies the truth of all and singular the averments of the second supplemental bill which are in the nature of a special replication to the plea filed by this respondent to the original and first supplemental bill and set up matters of avoidance thereof, and specially denies that the proceedings in the parish court of the parish of Rapides, whereby the said court, on the 25th of October, 1876, formally adjudged that the judgment of said court of the 13th of July, 1876, recognizing
251 the said Marie P. Evans as universal legatee of the said Stephen D. Linton and ordering her to be put into possession of his succession, was declared null and void, were, as averred in said second supplemental bill, sham proceedings, or collusive, or fraudulent, or corrupt, or in any way invalid; but, on the contrary, respondent avers the truth to be that the said proceedings and all the other mortuary proceedings in the succession of Stephen D. Linton averred and relied upon by this respondent in this answer or in the pleadings heretofore filed were valid, lawful, and *bona fide* proceed-

ings brought and carried on for the lawful and legitimate purposes for which they purport on their face to have been brought and carried on; that they were proceedings of a court of competent and exclusive jurisdiction to deal with and determine the matters therein and thereby determined, and that the proceedings and judgments of said court specifically set forth and pleaded in the pleas heretofore pleaded by this respondent and now adopted as part of this answer are obligatory and binding upon all courts and all parties until lawfully reversed or set aside.

And this respondent, further answering, denies all and
252 singular all charges of conspiracy or combination with the said David Urquhart, the said J. Madison Wells, the said J. Madison Wells, Jr., or others in said bills made, and denies specially all charges of fraud, fraudulent concealment, or contrivance in respect of any and all of the matters averred in the said bills, and denies all and singular the facts averred in said bills in so far as any element or circumstance of fraud or combination or concealment is averred to attend, accompany, or constitute such alleged facts; and this respondent avers that all the acts and doings of the Louisiana State Bank and of the State National Bank of New Orleans in and about the premises have been legitimate, lawful, and *bona fide*, and for the assertion of its legal and equitable rights, as set forth in the pleadings herein.

And, further answering, respondent claims the benefit of the prescription of one year, three years, five and ten years as established in the civil code of the State of Louisiana as fully as they are applicable to any facts apparent in the case.

And now, proceeding to answer the interrogatories propounded, this respondent, through its president, Samuel H. Kennedy, answers and says—

253 To the interrogatories propounded in the original bill to both defendants:

1st interrogatory. I have no personal knowledge of any occupation or attempt of occupation of Quantico plantation by the Louisiana State Bank nor the State National Bank, nor can I find, after diligent search among the books and papers of those banks, any evidence or reference to any occupation or intended occupation of said plantation.

2nd interrogatory. I refer to my answer to interrogatory first and make that a part of my answer to this interrogatory. I have no personal knowledge, nor can I find, after diligent search among the books and papers of the Louisiana State Bank or the State National Bank, any evidence or reference showing that any property or proceeds of property of any kind or at any time was ever obtained or came into the possession of either of said banks that came or was derived in any way from the said Quantico place or plantation, except in the following manner, to wit: That the
254 said Quantico plantation itself was sold by the sheriff of the parish of Rapides on the 17th of March, 1877, under judicial orders and proceedings taken in the matter of the succession of S. D. Linton by J. Madison Wells, Jr., who, as

public administrator of said parish, had been appointed to act as dative testamentary executor of said estate; that said sale was made to pay the debts of said estate, the said Louisiana State Bank being the largest recognized creditor as holder of the said eight mortgage notes made as aforesaid by S. D. Linton; that at said sheriff's sale the said Quantico plantation, with its improvements and appurtenances, was adjudicated to Chas. L. C. Dupuy for the sum of five thousand five hundred dollars, and that the State National Bank, as creditor as aforesaid, participated in the distribution of the price so realized, subject to the payment of court charges, &c.

That subsequently, to wit, on the 22d of March, 1877, by act before Theo. Guyol, notary public in this city, said Dupuy re-sold said property to Chas. L. Robinson, and the said complainant, Mrs. Marie P. Evans, aided and assisted by her husband and co-complainant, William R. Evans, intervened in said act and
255 expressly and formally ratified both the sale of said property to Robinson and also the sale by the sheriffto Dupuy, made, as hereinbefore stated, on the 17th of March, 1877, and renounced any and all rights she then had or ever had in said property, either as widow in community or universal legatee of said Linton or otherwise, as will appear, with other covenants, from the certified copy of said act annexed as Exhibit A.

3d Interrogatory. I have no knowledge of any agreement such as is referred to in the third interrogatory, nor can I find any evidence of any such agreement among the archives of the Louisiana State Bank or of its successor, the State National Bank, or of any occupation or intended occupation of the Quantico plantation by either of the defendants to this suit.

Answers to Interrogatories to the State National Bank in the Original Bill.

1st Interrogatory. The Louisiana State Bank was organized under an act of the Legislature approved on the 14th of March, 1818. Its officers for several years prior to the 17th of June, 1863, were
256 J. M. Lapeyre, president; L. Bernard, cashier, both since dead. The board of directors were at that time, June, 1863, J. M. Lapeyre, Jules A. Blanc, Alexander Brother, R. Bruger, A. Carriere, P. Gelpi, S. H. Kennedy, C. Oliver, and John R. Shaw.

On the 17th day of June, 1863, after formal protest by its president and board of directors, the Louisiana State Bank, under the irresistible compulsion of a military order, was surrendered under an inventory to a military commission, said order being issued by Maj. General Banks, dated before Port Hudson, June 11th, 1863.

The said commission was composed of Colonel Charles C. Dwight, of the 160th New York Volunteers, A. Miltenberger and J. M. Lapeyre; subsequently Christian Roselius was substituted for Col. Charles Dwight. This commission took possession of the bank and of its assets, and continued to manage its affairs from that date until the 3d of February, 1866, when they adjourned *sine die* and restored possession of the bank to its directors.

On the 21st of August, 1863, as named in the interrogatory to which this is an answer, there were no officers of the bank, it
257 being in the hands and under the control of the military commission as hereinbefore stated.

The Louisiana State Bank was changed into a national bank, under the name and title of the "State National Bank of New Orleans," by a vote of its stockholders duly authenticated by the national banking law of the United States, under an act of Congress approved June 3d, 1864, and under sections 51 and 54 of the Revised Statutes of the United States, which action of the stockholders was approved by the comptroller of the currency, as per certificate of organization No. 1774, dated 20th February, 1871.

2nd Interrogatory. The State National Bank took possession of all books and documents, records and property, and money of every kind, nature, and character belonging to the Louisiana State Bank. There is no record, entries, nor statements made in any of the said books of the receipts of property or proceeds of property sold — was received by the said Louisiana State Bank or any of its officers which came from the said Quantico place or plantation at any time or in any manner, except only from the sale of the
258 said Quantico plantation itself in 1877, as is fully described in affiant's answer already made above to the second interrogatory propounded to both defendants and to which reference is now made as part of the answer to this interrogatory.

Answers to the Interrogatories in the First Supplemental Bill.

Ist Interrogatory. The State National Bank has not had any arrangement or understanding of any kind, nature, or character with J. Madison Wells, Jr., nor made any arrangement nor had any understanding with him touching Quantico plantation that I am aware of or of which there is any record in the bank, so far as I know.

2d Interrogatory. The answer to interrogatory first is made a part of my reply to this second interrogatory as to any agreement or understanding with J. Madison Wells, Jr. He is unknown to me. I have no knowledge of my own nor can I find any record or evidence among the books and papers of the Louisiana State Bank or of the State National Bank showing or referring to any connection or arrangement or understanding between either of those banks and J. Madison Wells or J. Madison Wells, Jr., touching
259 Quantico plantation or as inquired of in this interrogatory.

3d Interrogatory. The answers already made to interrogatory 2d to both defendants and the answers to the 1st and 2d interrogatories under the first supplemental bill are referred to as part of my answer to this interrogatory. I find among the records of the bank the following, taken from the proceedings of the board of directors of the bank, which I have had copied from said records and make part of my reply to this interrogatory, and are for greater certainty marked as Exhibits "B," "C," "D," and are filed herewith as part hereof.

The Quantico plantation was first sold on the 2d of Jan'y, 1869, under judgment and judicial proceedings instituted in 1866 by the Louisiana State Bank; then resold by the sheriff M'ch 17, 1877, as fully explained in my answer to the second interrogatory propounded under the original bill to both defendants, and the sale thereof by the sheriff was duly ratified by the complainant, Mrs. Marie P. Evans, as therein explained, and reference is now made to the said answer as a part of the answer to this interrogatory. I know of no agreement between the defendants in this cause or any other cause and the said J. Madison Wells, Jr., touching the
260 sale of said plantation, nor can I find any record or evidence of any such agreement of any kind or nature whatever or of any such understanding between said defendants and said J. Madison Wells, Jr.

Interrogatory 4th. I know nothing whatever of any knowledge or want of knowledge that J. Madison Wells, Jr., may have had touching the matters referred to in the fourth interrogatory to which this is a reply or of his having in any manner taken possession of the plantation surreptitiously and unknown to the complainants. Affiant refers to his answer to the interrogatory No. three, last preceding this, as part of his answer to this interrogatory.

And this respondent denies all and all manner of unlawful manner of combination and confederacy wherewith it is by the said bills charged; without this that there is any other matter, cause, or thing in the said complainants' bills of complaint contained material or necessary for this respondent to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true to the knowledge or belief of this respondent; all which matters and things this respondent is ready and willing to aver, maintain, and prove as this honorable court shall direct,
261 and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) J. McCONNELL, *Of Counsel.*

Samuel H. Kennedy, being first duly sworn, deposes and says that he is president of the State National Bank of New Orleans; that the facts stated in the foregoing answer, as also in the answer to the interrogatories therein contained, so far as the same are therein stated and set forth as from his own knowledge, are each and all severally true, and that so far as the same are stated from knowledge derived from others he believes the same to be true.

(Signed) SAM'L H. KENNEDY.

Sworn to and subscribed, at New Orleans, this fifth day of November, 1881, before me—

[SEAL] (Signed) M. M. COHEN,
United States Commissioner, 5th Circuit and District of Louisiana.

262 EXHIBIT C. Filed 7th November, 1881.

(Copy.)

NEW ORLEANS, *Sept. 7th*, 1866.

To the stockholders of the Louisiana State Bank.

GENTLEMEN: In behalf of my husband, Mr. S. Duncan Linton, who is ill and whose curatrix I have been appointed by the tribunal of France, I herein make a proposition relative to the Quantico plantation, on which you hold eight mortgage notes, and, taking into consideration the ruined condition of our country, I trust you will be generous in your conclusions, as I shall be conscientious in mine.

If the bank agree to take 50 per cent. on the face of these notes, making the whole debt about $40,000, I will assume the payment thus:

First. By organizing the labor, which I control completely.

Secondly. By paying nothing the first year, inasmuch as the buildings are destroyed and the wreck of the place is such as to require all I could make the first year to put the place in a responsible condition for this debt.

Thirdly. I agree and bind myself to pay annually the sum of $5,000 until the debt is paid, with such interest as the bank may deem just.

263 Fourthly. That the bank purchase the place and bind herself to return it to my possession as soon as I pay the debt.

Fifthly. That the bank seize the plantation immediately, thereby securing the present growing crop, and that she bind herself to turn over to me the proceeds of said crop; otherwise I have not the means to touch the place at all.

Hoping this proposition may meet your approbation, gentlemen, I am, most respectfully,

(Signed) MARY PERKINS LINTON.

264 *Replication to the Separate Answer of State National Bank. Filed 11th November*, 1881.

MARIE P. EVANS & HUSBAND *vs.* D. URQUHART *et als.* } No. 7672. In Equity.

The replication of Marie P. Evans and W. R. Evans, her husband, complainants, to the separate answer of the State National Bank.

These repliants, reserving all exceptions to the manifold errors, uncertainties, and insufficiencies of the answer of the said *answer*, for replication thereto say that — will maintain and prove their bill to be true, certain, and sufficient, and that the answer of the

said defendant is evasive, uncertain, untrue, and insufficient to be replied unto by these repliants.

All which matters and things these repliants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

(Signed) J. R. BECKWITH.
(Signed) E. H. FARRAR, *Sol'rs.*

265 *Motion to Appoint Examiner. Filed 11th Nov.*, 1881.

MARIE P. EVANS & HUSBAND
vs.
D. URQUHART *et al.*
No. 7672. In Equity.

On motion of E. H. Farrar and J. R. Beckwith, of counsel for complainant—

It is ordered by the court that F. A. Woolfley, Esq., a commissioner of this court, be appointed examiner on the part of complainants for the purpose of taking the testimony of witnesses and registering documents.

266 *Motion to Appoint Examiner in Behalf of the State National Bank. Filed 25th Nov.*, 1881.

MARIE P. EVANS & HUSBAND
vs.
D. URQUHART *et al.*
No. 7672.

On motion of J. McConnell, of counsel for the State National Bank, one of the defendants herein—

It is ordered by the court that F. A. Woolfley, a commissioner of this court, be, and hereby is, appointed special examiner in the above cause to take the depositions of witnesses and of registering documents on behalf of the State National Bank, one of the defendants herein.

267 *Affidavit of J. R. Beckwith. Filed 3d April*, 1882.

MARIE P. EVANS *et al.*
vs.
LA. NAT. BANK *et al.*
No. 7672.

EASTERN DISTRICT OF LA., *ss:*

J. R. Beckwith, being first duly sworn, deposeth and saith that he is one of the solicitors for the complainant; that it has been impossible to procure the proofs necessary to establish all of the issue herein within the time allowed by the rule and the consent extension until the 1st Monday in April, 1882; that the matters in the bill relate to matters some of which occurred 20 years ago; that the complainant is without means adequate to expend much money in effecting prompt search for evidence; that it is important that the

books of the late firm of C. A. Weed & Co. be found and used in evidence; that the firm has been dissolved a long time, some of the members dead, and that a diligent search for said books has been necessary and has resulted in the belief that the same are in some town in Missouri and complainant is engaged in an effort to find them, as yet unsuccessful; that an examination of the record of the movement of cotton and claims for the returns of cotton in the Treasury Department of the U. S. —; that she has employed persons to make such examination and has not as yet been able to
268 get any report concerning the same; that she has used due diligence, and the fact that she has not as yet been able to secure copies of the accounts and documents is not due to her inattention or negligence, but by reasons of the difficulties and her lack of means to prosecute said search through a large number of agents.

That this application is not made for purpose of unjust delay, but that justice may be done.

(Signed) J. R. BECKWITH.

Sworn to and subscribed before me this 3d April, 1882.

(Signed) J. A. CHARBONNET, *D'y Cl'k.*

269 *Order Granting Delay to Take Testimony.*

Extract from the Minutes, November Term, 1881.

MARIE P. EVANS *et als.*
vs. } 7672.
LA. NATIONAL BANK *et als.*

APRIL 3RD, 1882.

On motion of J. R. Beckwith, one of the solicitors for the complainants herein, and on filing affidavit in support thereof, it is ordered by the court that a further delay of 30 days be allowed the complainants to take testimony in this case.

270 *Order Granting Additional Delay.*

Extract from the Minutes, April Term, 1882.

MARIE P. EVANS *et als.*
vs. } 7672.
LA. STATE NATIONAL BANK.

MAY 2ND, 1882.

On motion of J. R. Beckwith, one of the solicitors for the complainants, for reasons orally stated to the court and by it deemed sufficient, it is ordered that a further delay of two months from this date be allowed the complainant to take testimony in this case.

271 *Order Extending Time for Proofs. Filed* 31 *July*, 1882.

MARIE P. EVANS *et al.*
vs.
STATE NATIONAL BANK *et als.* } No. 7672.

On motion of J. R. Beckwith and E. H. Farrar, solicitors for complainants in this cause, and on suggesting to the court that F. A. Woolfley, the examiner in this cause, has been absent from the State by reason of ill-health and is still suffering from illness, it is ordered that the time for taking testimony and proofs in this case be extended until the rule day in November, 1882.

(Signed) DON A. PARDEE, *Judge.*

272 *Petition and Order Extending Time. Filed 7th Nov.*, 1882.

MARIE P. EVANS *et al.*
vs.
THE STATE NATIONAL BANK *et als.* } No. 7672.

To the honorable the judges of the said circuit court:

The petition of Marie P. Evans, complainant in this cause, shows that she is poor and has had great difficulty in obtaining the funds necessary to obtain the documentary proofs necessary in the records at Washington and in the papers of Col. Holibard, late quartermaster in the Department of the Gulf during the time when the spoliation of the Quantico plantation took place; that many of the papers have been mislaid; that she has employed persons to search for the said papers and for the books of the late firm of C. A. Weed & Co.; that she has reason to believe and does believe that the same can be obtained in two months; that she is advised that the same are necessary, and has done her utmost to secure the same in time, but has failed.

Wherefore she prays your honors grant an extension of the time within which she may produce said proofs until the 1st Mon-
273 day in January, 1883; that this application is made not for delay, but that justice may be done.

(Signed) J. R. BECKWITH &
E. H. FARRAR,
Sol's for Compl'ts.

EASTERN DISTRICT OF LOUISIANA:

J. R. Beckwith, being duly sworn, deposeth and saith that he knows the contents of the above petition, and that the same and the matter contained therein are true, and that this application is made that justice may be done.

(Signed) J. R. BECKWITH.

Subscribed and sworn to before notary this sixth day of November, 188–, at New Orleans.

(Signed) F'X GRIMA,
[SEAL.] *Not. Pub.*

Order.

Let the prayer of within petition be granted.

(Signed) DON A. PARDEE, *Judge.*

Nov. 6th, 1882.

274 *Affidavit of Marie P. Evans. Filed 30th December*, 1882.

MARIE P. EVANS & HUSBAND
vs.
THE STATE NATIONAL BANK *et als.* } No. 7672.

EASTERN DISTRICT OF LOUISIANA, *ss:*

Marie P. Evans, being duly sworn, deposeth and saith that she is the plaintiff in this cause; that she is without means to prosecute her suit except as she can earn the same, and that her income is small and that she has had great difficulty to support her family and incur the expense necessary to procure the evidence necessary, to obtain the evidence in this cause with promptness, to employ agents necessary to travel and make the inquiries necessary to trace the cotton and property in question in this action; that all of the cotton in question in this cause or a large portion thereof was consigned to and went into the possession of a firm known as C. A. Weed & Co., carrying on business in the city of New Orleans in 1864; that said firm has gone out of existence for years and the books thereof have been scattered all over the country; that this deponent has made diligent search therefore, but was informed
275 that the same were in the possession of one J. H. McKee, one of the members of the firm of C. A. Weed & Co., who was the only member of the firm who had knowledge of the cotton coming from the plantation of Stephen D. Linton, plaintiff's testator; that until within the last three days she believed the said McKee to be dead; that the information came to her through the relatives of the said McKee; that she believed the information to be true, and that the books in his possession were irretrievably lost, and that it was impossible to get the deposition of the said McKee, and has been engaged in an attempt to get information of the said cotton in the Treasury Department of the United States and in every other possible direction without avail; that within the last few days she has learned and verily believes that the said McKee is not dead, but is living near St. Louis, Missouri, and that he has full knowledge of all of the facts relative to the spoliation of the plantation of the said Stephen D. Linton; that all of said cotton and property passed through his hands, and that he paid over the proceeds thereof, and that by means of his testimony she will be able to

trace the proceeds of all of said cotton into the hands
276 of the defendants; that had she not been deceived by the belief that McKee was dead she should have procured his deposition long ago, but that since she has learned that he is not dead there has been no time to obtain his deposition; that the fault that the deposition of the said McKee has not been taken is not the fault of deponent, but arises from the erroneous belief that he had departed this life. Wherefore she prays this hon. court that the time for taking proofs in this cause on her part be extended for another period of thirty days in order that she may procure the evidence of the said McKee and the evidence contained in the books of the said firm of C. A. Weed & Co., which said books she is advised are in the possession of the said McKee and are of the highest importance to her case; that this application is not made for delay, but that justice may be done.

(Signed) MARIE P. EVANS.

Subscribed and sworn before me Dec. 30th, 1882.

(Signed) T. V. COUPLAND,
Commissioner U. S. Circuit Court,
Eastern District of Louisiana.

277 *Order Extending Delay for Proof.*

Extract from the Minutes, November Term, 1882.

MARIE P. EVANS
vs.
LA. STATE NATIONAL BANK. } 7672.

DECEMBER 30TH, 1882.

Upon the application of the complainant, supported by affidavit duly verified and on file, it is ordered by the court that the time for taking proofs in this cause on her part be extended for another period of thirty (30) days.

278 *Affidavit of J. R. Beckwith. Filed 9th January,* 1883.

MARIE P. EVANS and HUSBAND
vs.
STATE NATIONAL BANK *et als.* } No. 7672.

J. R. Beckwith, being first duly sworn, says that he is solicitor of complainants in this cause; that the testimony of John H. McKee, residing in St. Louis, Missouri, and Charles A. Weed, residing in the city of New York, State of New York, are, as he is informed and believes, and therefore states, material witnesses on behalf of complainants.

That by their testimony and answers to the interrogatories addressed to them and herewith filed he expects to establish material averments of complainants' bills.

(Signed) J. R. BECKWITH.

Sworn to before me this 9th January, 1883.

(Signed) J. A. CHARBONNET,
Comm'r C. C., E. D. La.

279 *Order for Commission. Filed 9th January*, 1883.

MARIE P. EVANS *et al.*
vs.
STATE NATIONAL BANK *et als.* } No. 7672.

Considering the affidavit of solicitor herein, it is ordered that a commission issue to take the depositions of the witnesses named in said affidavit—C. A. Weed and J. H. McKee—directed to any notary public or U. S. commissioner, and that thirty days after the date of the commission be allowed for the return thereof.

280 *Motion to Rescind, &c., Fixed for Trial.*

Extract from the Minutes, November Term, 1883.

MARIE P. EVANS & HUSBAND
vs.
STATE NATIONAL BANK *et als.* } 7672.

JANUARY 23RD, 1883.

On motion of J. A. Campbell, Esq., solicitor for the heirs of J. M. Lapeyre, it is ordered that the complainants' motion to rescind the order herein made on 7th December, 1883, dismissing as regards them the amended and supplemental bill, be fixed for hearing on Saturday, 16th February, 1884, at 11 o'clock a. m., and that complainants' counsel be notified.

281 *Motion to Dismiss for Want of Prosecution.*

Extract from the Minutes, April Term, 1883.

MARIE P. EVANS *et als.*
vs.
DAVID URQUHART *et als.* } 7672.

MAY 15TH, 1883.

On motion of J. A. Campbell & T. Gilmore & Sons, solicitors for the widow and heirs of Jno. Lapeyre, deceased, it is ordered by the court that complainants show cause, if any they have or can, on Tuesday, the 22nd day of May, 1883, at 11 o'clock a. m., why this suit should not be dismissed for want of prosecution.

282 *Petition & Motion of Lapeyre's Heirs to Dismiss, &c. Filed 17th May, 1883.*

MARIE P. EVANS & HUSBAND
vs.
THE STATE NATIONAL BANK, DAVID URQUHART, *et al.* } No. 7672.

The petition and motion of the beneficiary heirs of J. M. Lapeyre, dec'd, Angelina Avegno Lapeyre and her children, George and Martial Lapeyre; Francis J. Gasquet and wife, defendants in said suit.

To the honorable the judges of the circuit court aforesaid:

These defendants state that an original bill was filed by these plaintiffs against the State National Bank in January, 1876. David Urquhart and J. Madison Wells were made parties by supplemental bill in the autumn or winter of that year.

In March, 1878, your petitioners, as the beneficiary heirs of J. M. Lapeyre, dec'd, who died in 1871, were made parties by supplemental bill to the said suit.

Your petitioners state that they filed answer to this supplemental bill after service on them, 20 April, 1881, and a replication
283 was filed in that year thereto.

Your petitioners state that no step has been taken by the said plaintiffs to bring the cause to a hearing against them since the filing of their answer and the replication aforesaid, and that your petitioners state that the full period has elapsed within which these petitioners ought to have been summoned for a hearing of the cause in respect to them; and they submit to the court this motion on their joint and several parts to dismiss the bill for want of prosecution against them.

(Signed) T. GILMORE & SONS,
" JOHN A. CAMPBELL,
For Petitioners.

May 14, 1883.

284 *Motion to Dismiss Submitted.*

Extract from the Minutes, April Term, 1883.

MARIE P. EVANS *et als.*
vs. } 7672.
DAVID URQUHART *et als.*

MAY 22ND, 1883.

This cause came on to be heard on the motion herein made by the widow and heirs of Jno. M. Lapeyre, deceased, to dismiss the suit for want of prosecution, and was argued by the counsel for the parties respectively and submitted, whereupon the court took time to consider.

285 *Decree as to Dismissal, etc.*

Extract from the Minutes, April Term, 1883.

MARIE P. EVANS *et als.* }
vs. } 7672.
DAVID URQUHART *et als.* }

JUNE 4TH, 1883.

This cause came on to be heard on the motion herein made by the widow and heirs of John M. Lapeyre, deceased, to dismiss this suit for want of prosecution, and was argued by counsel.

On consideration whereof it is ordered that if the plaintiff has her case ready for hearing on or before the 3rd Monday of the next term of the court the said motion is refused; otherwise it is granted.

286 *Rule to Dismiss. Filed* 13 *June*, 1883.

MARIE P. EVANS *et al.* }
vs. } No. 7672.
DAVID URQUHART *et al.* }

On motion of J. McConnell, of counsel for the State National Bank, one of the defendants herein, and on suggesting to the court that the original bill was filed herein against said bank and others on the 11th of January, 1876, and subsequently numerous supplemental bills, the last of which was filed on 13th of March, 1878; that said bills and supplemental bills were duly put at issue by answers; that said complainant has delayed unreasonably and inexcusably to bring the cause to a hearing since the filing of their answers and the replications thereto; further suggesting that much more than the full period has elapsed within which said complainants should have completed their testimony and have summoned their appearers for a hearing, and therefore the said cause as to these appearers should be dismissed as to these appearers, the State National Bank, for want of prosecution;

And on further suggesting to the court that on the 4th inst.
287 an order of this hon. court was entered herein at the instance of the codefendants of these appearers, to wit, the widow and heirs of John M. Lapeyre, dismissing said cause as to them for want of prosecution unless the said plaintiff shall have her case ready for hearing on or before the 3d Monday of the next term of this court—

It is now ordered by the court that the said complainants do show cause, on the 13th day of June, 1883, at 11 o'clock a. m., why the same order should not be entered herein as to these appearers, the State National Bank, as was entered in regard to the widow & heirs of Lapeyre on the 4th inst., to wit, that if the said plaintiff has her case ready for hearing on or before the 3d Monday of the next term of the court this motion to dismiss is refused; otherwise it is granted.

Service of within motion accepted, and no cause or objection made to the same order being entered as was entered in the motion of the widow & heirs of J. M. Lapeyre.

(Signed) J. R. BECKWITH,
Sol. for Compl'ts.

288 *Order to Place A. H. Leonard on Record as Counsel for Complainants.*

Extract from the Minutes, November Term, 1883.

MARIE P. EVANS *et als.*
vs.
STATE NATIONAL BANK *et als.* } 7672.

DECEMBER 5TH, 1883.

On motion in that behalf by A. H. Leonard, Esq., it is ordered by the court that his name be placed on the docket as attorney of record for the complainants herein.

289 *Withdrawal of Solicitor. Filed 6th December*, 1883.

MARIE P. EVANS *et al.*
vs.
STATE NATIONAL BANK *et als.* } No. 7672.

And now comes J. R. Beckwith and, exhibiting to the court the letter of Marie P. Evans, complainant herein, and on proof of the signature thereof, asked that his name be stricken from the record as solicitor and counsel for complainants; and thereupon it is ordered that said letter be filed, and that the name of J. R. Beckwith be stricken from the record as counsel and solicitor for complainants.

EASTERN DISTRICT OF LOUISIANA, *ss:*

J. R. Beckwith, being duly sworn, deposeth and saith that he is acquainted with the handwriting and signature of Marie P. Evans, and that the annexed letter is all of it in the handwriting of the said Marie P. Evans, and her signature thereto genuine.

(Signed) J. R. BECKWITH.

Subscribed and sworn before me Dec. 6th, 1883.

(Signed) F. A. WOOLFLEY,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

290 Filed Dec. 6th, 1883.

Mr. Beckwith.

DEAR SIR: Please take notice that your professional services are no longer required in the prosecution of my suit, entitled No. 7672, Marie P. Evans *vs.* State National Bank and others.

Please hand all my papers to Mr. Evans, who will deliver this to you, and oblige,

Respectfully,

(Signed) MARIE P. EVANS.

New Orleans, December 5th, 1883.

291 *Motion and Order of Dismissal as to Angelina Lapere & al. Filed 7th December*, 1883.

MARIE P. EVANS and HUSBAND
vs.
DAVID URQUHART *et al.*
No. 7672.

On motion of Jno. A. Campbell and T. Gilmore & Sons, of counsel for Mrs. Angeline Lapeyre and others, made parties hereto by supplemental bill, and upon showing to the court that the complainant has not complied with the order of this honorable court of the fourth day of June last, requiring the said complainant to bring her said cause to trial on or before the third Monday of the next term, it is ordered that the supplemental bill, whereby said Angeline Lapeyre and others are made parties to this suit, and the amendment thereto, be, and the same are hereby, dismissed at the costs of the said complainant, with liberty to said complainant, upon proper showing and proper notice, at any time during the term to move to reinstate the cause so far as relates to said supplemental and amended bill.

(Signed) JOHN A. CAMPBELL.

292 *Rule to Show Cause Why Order of 7th Dec.*, 1883, *Dismissing Bill as to Widow & Heirs of Lapeyre, Should Not be Rescinded, &c., &c. Filed 13th December*, 1883.

MARIE P. EVANS and HER HUSBAND
vs.
THE STATE NATIONAL BANK *et als.*
No. 7672.

On motion of A. H. Leonard, solicitor of complainants, and on representing to the court that the order entered on the 7th December, A. D. 1883, at the instance of the solicitors of Angeline Avegno Lapeyre and others, widow & heirs of J. M. Lapeyre, dismissing the amended bill and supplemental bill as regards said widow and heirs, was erroneously granted, in this:

That previous to the nineteenth, the third Monday, of November, A. D. 1883, the time fixed by the order of 17th May, A. D. 1883, for the closing of complainants' evidence, to wit, on or about the 10th Oct'r, J. R. Beckwith, Esq., then solicitor of complainants, was requested by H. Kelley, Esq., a member of the bar of this court, to extend to the defendants the time for crossing certain interrogatories which had, on the 5th October, 1883, been filed on behalf of

complainants, addressed to the witness, W. Wolf, residing in
293 Shelbina, Missouri, notice to cross which had been duly served on said defendants, The State National Bank and said widow and heirs of J. M. Lepeyre, the reason given for said extension being that Mr. McConnell, solicitor of State National Bank, and who was to prepare the said cross-interrogatories, was absent from the city, and that although he (Kelly) represented Mr. McConnell during his absence, yet he (Kelly) was also about leaving the city for a short time, and desired on his return to cross the interrogatories, and thereupon Mr. Beckwith assented thereto, with the clear understanding and on express agreement that by such extension the rights of complainants should not in any manner be imperiled through the effect of said order of the 17th May, A. D. 1883, Mr. Kelly assuring Mr. Beckwith that the solicitors of the parties defendant would agree to this condition, by which said desired extension was asked and obtained, and would allow for such delay as might be thereby caused in completing the time for closing of complainants' evidence, and which agreement Mr. Beckwith understood applied, as necessarily it should, to the said widow and heirs of J. M. Lapeyre as well as to the State National Bank; that thereafter, and some ten days having expired without said
294 cross-interrogatories being filed, efforts were made on behalf of complainants to secure the crossing of said interrogatories and thereby secure the execution and return of the said commission, and which efforts continued until cross-interrogatories, on the 19th of Nov., 1883, were filed, and that a commission was immediately applied for, and when obtained was, on the 22d Nov'r, 1883, forwarded by mail to the U. S. commissioner for execution, and which, having been executed, was returned by mail and was received by the clerk of this court on the 7th December; that said defendants have had the full benefit of said extension; that had it not been for said extension complainants would have closed their evidence previous to said 19th November; that at the next session before the special examiner, after the return of the said commission, complainants intended to offer the balance of their testimony, not only as against the State National Bank but also the said widow and heirs of Lapeyre.

The foregoing being considered, it is ordered that said de-
295 fendants, Angeline Avegno —— and others, widow and heirs of Lapeyre, show cause on Wednesday, 19th inst., at 11 o'c. a. m., why the order entered on the 7th December inst., dismissing as regards them the said amended and supplemental bills, should not be rescinded and complainant further allowed 20 days to offer the balance of their proof as against said defendants, and such further orders as in the premises may be required.

296 *Motion & Order on State National Bank to Produce Certain Books or Submit to Examination by Expert to be Appointed to Examine Same at Bank. Filed 14th December, 1883.*

MARIE P. EVANS *et al.*
vs.
STATE NATIONAL BANK *et als.* } No. 7672.

On motion of A. H. Leonard, solicitor for complainants, and on suggestion to the court that certain books and documents now in possession of defendant The State National Bank contain evidence which will materially aid her in establishing the several matters articulated in bill of complaint herein filed, to wit:

The minute books of the Louisiana State Bank and of the State National Bank, as kept by said banks from 1860 to 1869, inclusive;

The letter books of said banks from 1861 to 1869, inclusive;

The receipt books of said banks from 1863 to 1869, inclusive;

The journals of said banks and the ledgers of said banks, as kept by them from 1864 to 1869, inclusive;

And the affidavit herewith presented being considered, it
297 is ordered that the defendant The State National Bank deliver said books into the custody of the clerk of this court on Monday, the 17th day of December, A. D. 1883, that complainants may have an opportunity to examine same, or that said bank permit, if they so prefer, some person, to be selected by the solicitor of complainants with the approval of the court, to examine said books at the bank, between the hours of 11 o'c. a. m. and 3 o'c. p. m., for such number of days, not exceeding ten days, as may be required to examine said books and papers.

Personally appeared before me, undersigned authority, Marie P. Evans, who, being duly sworn, deposes and says that the allegations made in foregoing motion are true to the best of her information, knowledge, and belief.

(Signed) MARIE P. EVANS.

Sworn to & subscribed before me this sixth day of December, A. D. 1883.

[SEAL.] (Signed) BENJAMIN ORY, *Not. Pub.*

298 *Continuance of Rule to Vacate.*

Extract from the Minutes, November Term, 1883.

MARIE P. EVANS *et als.*
vs.
STATE NATIONAL BANK *et als.* } 7672.

DECEMBER 19TH, 1883.

Leave of court having first been obtained, on account of the inability of Judge Campbell to attend, the rule to vacate order of 7 Dec'r instant, dismissing supplemental & amended bill, is continued, to be re-assigned by consent.

299 *Rule to Vacate Order of Dec'r 7, 1883, Submitted.*

Extract from the Minutes, November Term, 1883.

MARIE P. EVANS *et als.*
vs.
STATE NATIONAL BANK *et als.* } 7672.

FEBRUARY 16TH, 1884.

This cause came on to be heard on the motion of the complainant to vacate the order of 7th December, 1883, dismissing the amended bill as to the heirs of J. M. Lapeyre, deceased, and was argued by counsel on both sides and submitted, when the court took time to consider.

300 *Affidavits of J. R. Beckwith and H. B. Kelly, Offered by Complainants on Motion to Vacate. Filed Feb'y 16, 1884. Offered in Evidence by Complainants March 22, 1884.*

MARIE P. EVANS & HUSBAND
vs.
THE STATE NATIONAL BANK & Others. } No. 7672.

J. R. Beckwith, first duly sworn, deposes that on or about the 10th October, 1883, H. B. Kelly, Esq., asked him, on behalf of James McConnell, Esq., to extend the time for the crossing of the interrogatories addressed to witness, W. Wolf, which affiant, as solicitor of complainants at that time, had filed notice to cross, which had been duly served on the solicitors of the defendants, The State National Bank and widow and heirs of J. M. Lapeyre, said Kelly stating that Mr. McConnell was absent from this city; that he, Kelly, represented him in his absence, and that he himself also was about to leave temporarily, and desired to cross the said interrogatories on his return. To this request affiant replied that while he was willing to grant the extension asked, yet he could not do so without an understanding by which the right of complainants should be protected against the effect of the certain orders rendered at the instance of the solicitors of said defendants on or about the 17th May,
301 1883, by which complainants were required to complete their evidence and prepare their case for hearing on or before the third Monday of November following.

To this Mr. Kelly replied, in case of the granting of his request for extension, said orders would not be invoked against complainants, and stated in this regard that he either already had or would obtain the consent of the solicitors of the widow and heirs of J. M. Lapeyre, defendants, thereto.

That on these express and clearly understood conditions said extension of time was granted.

That cross-interrogatories to the witness Wolf were filed on behalf

of the State National Bank of Louisiana only on the 19th November, 1883; that thereupon a commission, duly issued, was forwarded by mail to the commissioner, and by him executed and returned to the clerk of the circuit court and filed in the clerk's office on the 7th December.

Affiant further says that had it not been for said extension he, on behalf of complainants, would have strictly complied with the said order of May, 1883, as well as regards the defendants, the widow and heirs of J. M. Lapeyre as the State National Bank, and
302 the delay in the crossing of said interrogatories thus assented to by affiant as solicitor of complainants was the sole cause why the same was not done.

That if it had not been for an express agreement with the said H. D. Kelly that the extension of time granted as aforesaid to cross said interrogatories was upon the condition that the order in this case by which trial was to be had on the Monday in November named in the order was to be in all things suspended and not acted upon either by the defendants in the original, amended, and supplemental bills, said commission would have been issued without cross-interrogatories and the cause brought on for trial at the opening of the November term; and further deponent saith not.

(Signed) J. R. BECKWITH.

Sworn to & subscribed before me this 12 Dec., 1883.

[SEAL.] (Signed) THEO. GUYOL, *Not. Pub.*

Henry B. Kelly, being sworn, says that he has read the foregoing affidavit of J. R. Beckwith, Esq., and that the statements therein made, in so far as they relate to the agreement and under-
303 standing therein stated to have been had with this affiant in regard to the granting of delay by Mr. Beckwith at the request of this affiant for the crossing of the interrogatories and execution and return of the commissioner referred to in the affidavit of Mr. Beckwith, are true in every particular; and this affiant says that the said delay was agreed to by Mr. Beckwith upon the distinct understanding and the assurance of this affiant that no advantage whatever would be taken of Mr. Beckwith or his client by reason thereof, and this affiant would certainly not have asked for or availed himself of this act of professional courtesy on the part of Mr. Beckwith had he supposed it possible that any advantage by reason thereof would be taken of Mr. Beckwith or his client. This affiant says that he is associate counsel in the cause with Mr. J. McConnell for the State National Bank, and that Messrs. T. Gilmore & Sons are of counsel for the widow and heirs of J. M. Lapeyre; that after the agreement was had as aforesaid between affiant & Mr. Beckwith affiant was called upon at his office by a member of said firm, one of the sons, and spoken to with regard to said interrogatories, when this affiant communicated to the said Mr. Gilmore the said agreement with Mr. Beckwith, with which agreement the said Mr. Gilmore appeared to be satisfied & to which he made no objection, and

this affiant did not consider it necessary to have any further interview with Messrs. T. Gilmore & Sons in regard to the matter.

(Signed) HENRY B. KELLY.

Sworn to & subscribed before me this 12 day of Dec., 1884.

[SEAL.] (Signed) MICH'L GERNON, *N. P.*

304 *Rule to Vacate Dismissed.*

Extract from the Minutes, November Term, 1883.

MARIE P. EVANS *et als.*
vs.
STATE NATIONAL BANK *et al.* } 7672.

FEBRUARY 21ST, 1884.

This cause came on to be heard on the rule taken by the complainant- to vacate the order herein made on 7th December, 1883, dismissing the supplemental and amended bill so far as the heirs of J. M. Lapeyre, deceased, are concerned, and was argued by counsel. On consideration whereof it is ordered that the said rule be, and hereby is, discharged.

305 *Petition for Rehearing as to Complainants' Rule of Dec.* 13, 1883. *Filed* 12*th April*, 1884.

MARIE P. EVANS & HUSBAND
vs.
THE STATE NATIONAL BANK & Others. } No. 7672.

To the honorable the judges of said U. S. circuit — for the eastern district of Louisiana:

The petition of William Evans and Mary P. Evans, his wife, complainants in the above entitled and numbered cause, respectfully asks, for the reasons set forth in accompanying brief, a rehearing in the matter of the rule and motion taken and filed on the 13th December, 1883, asking the rescission of the order of the 7th December, 1883, dismissing as against the widow and heirs of J. M. Lapeyre the amended and supplemental bills, and which rule of 13th December was discharged by decree of this court on the 22nd February, 1884.

(Signed) A. H. LEONARD, *Solicitor.*

306 *Petition for Rehearing Submitted.*

Extract from the Minutes, November Term, 1883.

MARIE P. EVANS & HUSBAND
vs.
STATE NATIONAL BANK & Others. } 7672.

APRIL 12TH, 1884.

This day in open court came A. H. Leonard, solicitor for the com-

plainants, and presented a petition for a rehearing as to complainants' rule of 13th December, 1883, supported by brief, and the court took the matter under advisement.

307 *Order of Publication. Filed 30th May,* 1884.

MARIE P. EVANS & HUSBAND
vs.
STATE NATIONAL BANK and Others. } No. 7672.

On motion of A. H. Leonard, solicitor of complainants, representing to the court that F. A. Woolfley, special examiner, has returned into court the various documents and evidence offered on behalf of complainants, it is ordered that an order of publication thereof hereby issue.

308 *Motion to Enter Order of 12th April,* 1884. *Filed 5th June,* 1884.

MARIE P. EVANS & HUSBAND
vs.
DAVID URQUHART *et als.* } No. 7672.

On motion of J. A. Campbell and T. Gilmore & Sons, of counsel for heirs of J. M. Lapeyre, and upon showing to the court that through error or omission the order of this hon. court herein rendered on the 12th day of April last, discharging the rule of the 13th Dec'r, 1883, to rescind the order of the 7th Dec'r, 1883, was not entered on the minutes of this court, although a petition for a rehearing was subsequently filed, it is ordered that said order be now entered on the minutes of this court *nunc pro tunc.*

309 *Motion to Set the Case as to the State National Bank for Hearing. Filed 5th June,* 1884.

MARIE P. EVANS & HUSBAND
vs.
STATE NATIONAL BANK & Others. } No. 7672.

On motion of A. H. Leonard, solicitor of complainants, it is ordered that this cause as against the defendant, The State National Bank, be set for hearing on the 10th day of June, 1884, and the solicitors of said State National Bank be notified hereof.

310 *Order. Cause Assigned for Trial.*

Extract from the Minutes, April Term, 1884.

MARIE P. EVANS *et als.*
vs.
STATE NATIONAL BANK.

JUNE 5TH, 1884.

On motion of A. H. Leonard, solicitor for complainants, ordered that this cause as against the defendant, The State National Bank, be set for hearing on 12th instant, at 11 a. m., and that said d'f't be notified.

311 *Motion to Publish. Filed 13th Dec.*, 1884.

MARIE P. EVANS *et al.*
vs.
STATE NATIONAL BANK *et als.* } No. 7672.

On motion of A. H. Leonard, solicitor for complainants, and on suggestion to the court that the time in which evidence should be adduced has expired, it is ordered that publication be made of the evidence adduced in said cause.

312 *Rule to Make Publication of Testimony. Filed 2d January*, 1885.

MARIE P. EVANS and HUSBAND
vs.
THE STATE NATIONAL BANK *et al.* } No. 7672.

On motion of A. H. Leonard, solicitor for complainants, and on suggestion to the court that the time for taking evidence in said cause having expired, all parties having closed and return of evidence adduced having been made, it is ordered that the defendants be notified to show cause on Monday, 5th inst., 11 o'c., why publication of evidence should not be made.

313 *Motion to Suppress in Behalf of Complainants. Filed 5th January*, 1885.

MARIE P. EVANS and HUSBAND
vs.
STATE NATIONAL BANK *et al.* } No. 7672.

A. H. Leonard, solicitor of the complainants, for the reasons hereinafter stated, moves for the suppression of the evidence offered in behalf of the defendant, The State National Bank, in the above-entitled cause.

The transcript of case No. 14665, 4th dist. court, N. O., entitled David Urquhart *vs.* S. D. Linton, annexed to deposition of B. F. Jonas, marked Exhibit No. 1, offered by defendants on Nov. 28, 1881, and the transcript of same case offered by defendants June 10th, 1884, are not admissable as against complainant- except to show *rem ipsam*. The motion for seizure and the affidavits of D. Urquhart & J. M. Wells and the paper signed J. Madison Wells & David Urquhart are *ex parte* statements and affidavits of parties defendants to this cause and cannot be received as against complainant- as evidence of the truth of the statements.

The record of a suit entitled Marie P. Evans *vs.* The United
314 States, No. 3107, before the claims commission, to wit, the petition and amended petition of Marie P. Evans and the judgment and opinion of the court thereon, offered by defendants are not admissable. The matters and things therein claimed and considered have no connection with the matters and things at issue between complainants and defendants, and the opinion and decree of the claims commission cannot in this suit be received as against complainant- to establish any fact other than *rem ipsam*.

The same objections apply to the additional report of the commissioners of claims, also offered by defendants. The testimony of Mrs. Marie P. Evans, taken in said suit, is admissible if offered for the purpose of contradicting her statements and evidence in case at bar, but not for any other purpose, and the testimony of Nemour Bienvenue, as found in the record of said claim (claims commission), is not admissable for reasons stated and also because it is the *ex parte* affidavit of said Nemour Bienvenue. Mr. Bienvenue is a well-known resident of New Orleans, and if defendants desired his testimony they should have taken it contradictorily with complainant-.

The order No. 138, copied from the book of minutes of the defendant company, should be excluded, because the books of
315 defendant cannot be received as against complainant- and because, as it appears on the said book, it is and purports to be a copy. The original should have been produced or its non-production satisfactorily accounted for. Mr. Kennedy says he looked for original among archives of the bank and couldn't find it, but the order, if made as claimed, was a military order and must exist, preserved among the archives of the Government.

This objection also applies to the testimony of C. L. C. Dupuy & of S. H. Kennedy as to said order.

The statement made by witnesses B. F. Jonas and David Urquhart as to a writ of seizure issued in suit 14665, the return thereon, and the written appointment of Wells as keeper cannot be received, because, if these statements be true, there is other and better written evidence. Such writ, return, and appointment are claimed to have been official; if so, they should be with the record of said suit. It is not shown that any search has been made for them by the officer charged by law with the custody of said record. Mr. Jonas says the record was lost for a long time, and that the papers may have been taken out and sent to the parish of Rapides. It is not shown that any search has been made for said papers in Rapides parish.

True, Mr. Jonas says they were probably burned when the
316 court-house of Rapides parish was burned, but Mr. Jonas is entirely mistaken as to the burning of the court-house. That occurred during the war and long before the time when Mr. Jonas says he saw said papers. The archives of the parish of Rapides since 1865 have been regularly preserved, and if, as Mr. Jonas says, the papers were probably sent to the parish of Rapides, where, he he says, they belonged, search should have been made there for them, which has not been done. Under these circumstances parol and secondary evidence is clearly inadmissible.

The following statements in testimony of B. F. Jonas are heresay, viz:

Commencing on page 11: "We considered that on that plantation (Quantico) all that was on it, movable and immovable, was under seizure in that suit No. 14665 since 1861. The property had been in the hands of a keeper, and we took the ground that this (cotton) had been taken from the custody of the keeper. We therefore claimed the right to seize it, and pursued it as cotton that legitimately belonged to the seizure in said suit."

2nd. Commencing on page 23:

"I have not. On the contrary, we were informed by Mr. Urquhart (one of the def'd'ts) that he had obtained an order of seizure and sale of the Quantico plantation at the beginning of the war in
317 the suit No. 14665, & that that seizure was still pending; that some cotton which should be upon there (?) in the possession of the receiver had been extracted by the receiver, and was brought to the city, and was in the possession of Henry Perkins or the Treasurer of the United States through Mr. Burbridge, and held by Burbridge & Co. or somebody else, and he claimed that cotton as his own and claimed to seize it. We heard nothing of the Louisiana State Bank or anybody else then, and had no reason to believe that anybody was interested in it except Mr. Urquahart or the firm of W. & D. Urquhart."

3rd. Commencing page 46: "I remember asking (what became of property on Quantico) various parties from Rapides, as we felt an interest, after we got possession of the notes, in collecting this debt. I had no information of a specific character, but I had general information that the greater part of the movable property was taken off by Mr. Linton during the war. I heard that from general report."

4th. Page 57: "We knew it (who had possession of the cotton, &c.) from seeing the return of the sheriff. I am almost positive it was affixed to the return made by the sheriff."

As to this statement, the return of the sheriff, with papers thereto affixed, is better and written evidence.

"I knew it as a fact; Urquhart and ourselves had a con-
318 versation with Wells on the subject of the institution of this suit. Gov'n'r Hyams had been Wells' lawyer for thirty years."

That is to say, Jonas "knew it" from conversations with Urquhart & Wells, defendants herein. His statements are hearsay. Besides

the statements of Urquhart & Wells, defendants, are not admissable as against complainant.

As appears from his own statements, Mr. Jonas was in the Confederate service and absent from Louisiana from spring of 1862 until summer of 1865. He had no connection with the matters about which he testifies and knew nothing of them until fall of 1865.

The testimony of C. L. C. Dupuy, pages 215 to 242, with exceptions hereinafter stated, was, as he says himself, made on information derived exclusively from his examinations of the books and papers of the defendant company, of which he was an officer from May, 1869, to July, 1879. He had no connection with the matters and things at issue, knew nothing about them until 1869, and then his information came from the books and papers of the bank. His testimony is secondary, and, moreover, as the books & papers of defendant company are not admissable as against complainant, information derived from those books and papers is equally inad-
319 missible. The exceptions above referred to, which are not objected to, are — following, of which Mr. Dupuy had personal knowledge:

1st. That Messrs. Hall & Leonard, acting on behalf of complainant, examined books, etc., of the bank.

2. That certain signatures of Bernard & Roselius were genuine.

3. That he, witness, once bought the Quantico plantation at a judicial sale.

As to 3rd, there is other and better evidence—the act of sale. The wisdom of the rule requiring production of best evidence is illustrated by this witness. He was grossly mistaken as to this sale, and had to be recalled to correct his statements made positively on his 1st examination.

The testimony of S. H. Kennedy should be excluded, because he knows nothing of his own knowledge which is material or relevant. His information was derived from the books & papers of the banks, from its archives. He knows nothing otherwise. This appears by his own statements made on X examination. In answer to a question of the solicitors of the defendant whether or not he, Kennedy, reiterated the facts stated in the answer signed by him as his testimony in this case Mr. Kennedy said:

"I do. I have never been able to find a particle of evi-
320 dence that we ever received in any shape or form anything from that plantation (Quantico) until it was sold under foreclosure of mortgage, in 1866. If there is any evidence in the bank I have never seen it, and I do not believe there is any there."

In the answer "reiterated" by this witness many statements are made "on information and belief" which are mere hearsay & should be excluded, and many statements on their face show that they were made from public records. Such statements are secondary and should be excluded, the non-production of the records not being accounted for. It is not necessary to give more fully statements above referred to.

Following statements in answer are also objected to:

Pages 4 to 7: After stating certain allegations made in bill, these

allegations are not only denied, but it is stated that "they are false from beginning to end; that there is not a word of truth in them." If this is to be considered merely a new and improved style of pleading, the effect of which is to put complainant on her proof, mere style is, of course, simply a matter of taste; but if such denial so made is, when reiterated by Mr. Kennedy as a witness, to be taken as evidence, we, of course, object to it, because it is clearly shown that Mr. Kennedy of his own knowledge does not know whether the allegations referred to are true or false.

321 On page 8 the answer states: "The truth of the matter in regard to the relation of the late Louisiana State Bank and its successor, the State National Bank, to S. D. Linton, the Quantico plantation, & Marie P. Evans is as follows," etc.

The objection last made above applies to this pleading.

On page 13 of answer respondent says "that prior to 17th June, 1863, no proceedings had been taken by Louisiana State Bank to enforce the payment of the notes by the enforcement of the mortgage."

And on page 27: "On 21st Sept., 1866, a suit was instituted *via ordinaria*, and this was the first step taken in the courts by the Louisiana State Bank as the holder of said notes against S. D. Linton and the Quantico plantation."

These statements are made without qualification, but the testimony of Mr. Kennedy shows that he has no knowledge of the matters stated except such as he derived from the books & archives of the bank, which are not admissible.

On pages 23 & 24 of answer "respondents say that S. D. Linton addressed a certain letter to the military commission in charge of the bank, and that Marie P. Evans addressed a certain letter to the bank," etc.

322 These statements, when reiterated as testimony by Mr. Kennedy, are objected to, because the letters themselves are the best evidence and their non-production has not been accounted for.

The testimony of D. Urquhart is for the greater part hearsay and much of it is second-ry, and yet in his examination-in-chief he made most positive and unqualified statements; on cross-examination, however, he was forced to admit that he knew nothing material of his own knowledge, and that his testimony was based on statements made to him by various persons.

We object to following statements made by Urquhart:

That the Louisiana State Bank never had anything to do at any time with the seizure of the Quantico plantation or with the keeper thereof.

That the seizure made in my suit remained during the war, and the Louisiana State Bank never had anything to do with it.

That the bank never had anything to do with the seizure of the Quantico plantation until she seized in 1866.

That the bank never had anything to do with the Quantico plantation prior to 1866.

That the Cohen suit and my suit were the only suits that
323 ever existed on the property until after the war.

That the Louisiana State Bank never, either directly or indirectly, received any money realized from the seizure of the Quantico plantation.

That Mrs. Linton or her agent, Henry Perkins, got a portion of proceeds realized from certain cotton seized under an order issued in suit 14665.

That the recitals in a certain motion filed in said suit are true, such recitals being substantially that Henry Perkins removed from the custody of the sheriff of Rapides parish 65 bales cotton, grown after the writ of seizure was executed and which enured to benefit of seizing creditors.

That appended hereto (to said motion) is the return of the sheriff of Rapides to the original writ of seizure issued by your hon. court on the 18 M'ch, 1861, showing seizure and advertisement, and also the order of the sheriff of Rapides putting the cotton in the custody of J. M. Wells, as his special ag't, to guard same, and said motion being sworn to by David Urquhart and J. M. Wells and signed by them.

We also object to the testimony of Urquhart that the recitals in a certain paper filed in same record (suit 14665) are true, such recitals being that in case of David Urquhart *vs.* S. D. Linton,
324 No. 14665, 4th dist. court, New Orleans, a writ of seizure and sale issued on 15th M'ch, 1861, to the sheriff of the parish of Rapides, which he executed by seizure of property described in writ, all of which appears by the writ of seizure and sheriff's return thereon made on the 21st March, 1861, and after due notice was advertised for sale on 3rd Ap'l, 1861, but all further proceedings were stayed and the sheriff kept possession up to present day, and it is now advertised for sale. The cotton was gathered during the possession of the sheriff and under law of Louisiana formed a part of the effects seized and are held under the seizure. These facts and the actual possession of the sheriff are patent by the writ of seizure itself now submitted and the authorization of the sheriff, Wm. J. Neal, to Major, now Gov'n'r, Wells to take charge for him of all cotton, corn, & personal effects on the Linton plantation, and he has authority further to keep all intruders from off the land, Aug't 21, 1863, signed W. J. Neal, sheriff.

This cotton was grown while the plantation was under seizure by the sheriff of Rapides at suit of D. Urquhart, and Gov'n'r Wells was custodian of the property, which is now and has been since 1861 under seizure, the sale having been stayed by the general
325 stay law passed in 1861. The seizing creditor held the cotton legally against the world, and Gov. Wells has an interest in the debt, as well as being keeper. The writ and sheriff's return, marked A; sheriff's order appointing Wells, marked B; full testimony beyond sheriff's return, if considered necessary, can be produced, etc.

Now, as to each and every one of the foregoing statements made by Mr. Urquhart he knows absolutely nothing.

Before his attention was called to the two papers filed in suit 14665 by the solicitor for defendant said solicitor asked Mr. Urquhart: "Do you know who was appointed keeper of the Quantico plantation under the seizure that was made in this suit No. 14665?"

The answer was: "No, sir. I forgot the name. I did not take much interest in who the keeper was then."

Question. You do not remember?

Answer. No, sir; it is so long since.

Solicitor for defendant then directed Mr. Urquhart's attention particularly to the two papers hereinbefore referred to. Mr. Urquhart "reiterated" statements therein, but shortly thereafter, still on direct examination, solicitor for defendant asked the question: "You have stated in your testimony, when your examination commenced, you did not recollect who was appointed custodian
325½ of the Quantico plantation under suit No. 14665. Have the papers I read to you since refreshed your memory with regard to who was appointed custodian?" and Mr. Urquhart promptly answers: "Well, no, sir; my memory is not good."

Question. But you have stated it in the papers?

Answer. Yes, sir.

Question. But having referred to the papers, you now state they are correct?

Answer. I said if I signed these papers I know what is in them is correct. What I signed is correct.

Question. The papers say Wells was custodian?

Answer. Yes, sir; then I say that he was custodian.

On cross-examination Urquhart says that on the 15th M'ch, 1861, and prior thereto the people of Louisiana were in a state of intense excitement, in which he shared; that he was in the field aid-de-camp of Gov. Moore, assigned to the duty of organizing troops, his duties being extensive and onerous; that in April, 1862, he passed from the service of the State to the service to the Confederacy, becoming lieut. col. & adj't gen'l on the staff of Gen'l Bragg; while in the State service he was in the field with the Louisiana troops; left New Orleans about the 1st March, 1862, and did not re-
326 turn to the State of Louisiana until July, 1865; that he was never in the parish of Rapides in his life; that he has no recollection of any stay law having been passed by the Louisiana convention; that the Bank of Louisiana was largely interested in knowing what was to be done with the Quantico plantation.

That he doesn't know anything about the writ issued in suit 14665; all he saw was the paper Judge Elgee drew up; that he don't know whether a writ issued or not; that he never knew whether the writ came into the hands of the sheriff; that he has no personal knowledge of the facts of the seizure; was never on the plantation.

That as for the 65 bales of cotton he does not know where they came from except from what he was told; that he doesn't know anything that occurred on the Quantico plantation during years 1862, 1863, 1864, 1865.

That so far as the statements made in the affidavit signed by him and Wells are concerned, in swearing that these statements were true, he means to say that the information he received from others led him to believe so.

With regard to the statements made in the second paper
327 he says that he only knows the property was advertised for sale because he was told so by Mr. Elgee; that he has no knowledge of the facts set forth in said paper except as he received the information from Judge Elgee, and when he swears the statements in said paper are true he means to say they are true provided the information given to him is true.

Subsequently, on further question, it turns out he was not informed by Judge Elgee, except as to the fact of seizure made in 1861, and that his information was derived from Hyams & Jonas, his att'ys, and his only knowledge that statements are correct is the statement made to him by Hyams & Jonas.

As to Perkins being agent of Mrs. Linton, on X ex. Urquhart says that he supposes Perkins was agent of Mrs. Linton, because he, Perkins, said so.

That when he swears the bank never instituted any suit whatever against Linton in connection with these mortgage notes he means that he has no knowledge that it did.

That as to the keeper of the property he knows nothing, except from hearsay, and that he has no knowledge as to the date of the appointment of keeper.

328 The defendant has offered in evidence a transcript, which is styled probate proceedings in the succession of S. D. Linton, No. 248. To these proceedings complainant was not a party prior to June 5, A. D. 1875. In this transcript is found what purports to be a copy of proceedings had in No. 1171, probate docket, parish of Rapides, application for administration, etc., etc. Embracing from page 25 to page 189, inclusive, of said transcript to these proceedings had in No. 1171, complainant was a stranger; it contained various applications of various parties to be appointed administrator of said succession; the opposition of two sisters of Linton, claiming to be his only heirs; various claims that the succession was indebted to various parties; various oppositions to various schedules and accounts, and the evidence of various witnesses as to these various matters.

The record is, of course, admissable to show *rem ipsam*, and that the various proceedings were had, but it is not admissable for any other purpose and should not be received for any other purpose. The evidence found in this transcript, including testimony, among others of J. Madison Wells, a party defendant to this suit,
328½ does not constitute any part of the record and is not admissable at all, and the record as a whole is not admissable for the purpose of proving as against complainant the recitals made in pleadings, and, except for the purposes hereinbefore stated, said transcript should be excluded.

The State National Bank offered the depositions of J. Madison Wells taken under commission, but restricts the offer solely to the

purpose of proving out of what court the process issued, under which, Wells says, he was keeper or custodian of the Quantico plantation.

The depositions cannot be so received; if defendant desires to avail itself of the depositions it must offer the depositions as a whole.

This is well settled. We have no objection to the reception of the depositions as a whole, but it must be received in its entirety and for all purposes or be totally rejected.

(Signed) A. H. LEONARD,
Solicitor for Compl'nt.

329 *Motion to Fix Motion to Suppress. Filed 5th January*, 1885.

MARIE P. EVANS and HUSBAND
vs.
STATE NAT'L BANK *et al.*
No. 7672.

On motion of A. H. Leonard, solicitor for complainants, and on suggestion to the court that he has filed a motion to suppress evidence offered on behalf of defendants The State National Bank before examiner in said cause, it is ordered that said motion be fixed for hearing on Monday, 12th inst., & that notice of filing of said motion to suppress & of this order be given to the said defendant, The State National Bank.

330 *Order of Publication of Evidence.*

Extract from the Minutes, November Term, 1884.

MARIE P. EVANS & HUSBAND
vs.
STATE NATIONAL BANK *et als.*
7672.

FEBRUARY 5TH, 1885.

This cause came on to be heard on the motion of the complainant to make publication of the evidence adduced herein—A. H. Leonard appearing for movers, James McConnell for defendant in rule—and, the defendants making no objection, it is ordered by the court that there be publication of the evidence.

331 *Supplemental Motion to Suppress in Behalf of Complainants. Filed 10th January*, 1885.

MARIE P. EVANS *et al.*
vs.
STATE NATIONAL BANK *et al.*
No. 7672.

And now come complainants and move the court to suppress the testimony of B. F. Jonas and of David Urquhart as to the existence of a writ of seizure and sale, with sheriff's return thereon and papers annexed thereto, issued in suit No. 14665, 4th district court

of New Orleans, entitled David Urquhart *vs.* S. D. Linton, and also to suppress all evidence tending to show the existence of such writ, with such return and with paper annexed thereto, on the further grounds that such testimony and evidence must be excluded because defendants cannot be permitted to contradict the solemn averments made in their answers and under oath, to wit, in said answer the respondent avers that under the writ of seizure and sale issued in said suit (No. 14665) the sheriff of Rapides parish seized the mortgaged property and advertised it for sale according to law, but that the sale was stayed by the passage of a stay law by the then Legislature of the State, but that the sheriff, as in duty bound, maintained the
332 possession and control of the property under seizure by having a keeper thereon; that while the execution of said writ of seizure and sale in the hands of the sheriff was thus suspended the court-house of the parish of Rapides was destroyed by fire, with all the records both of the sheriff and of the clerk of said parish, including the said order of said seizure and sale, thereby rendering it impossible for the said sheriff either to execute or make a return upon the same, and that matters remained in this condition until Oct'r 6th, 1865, when an *alias* writ issued, returned unexecuted, by order of the plaintiffs' attorneys, &c.

And your complainants show to your honor that the testimony of B. F. Jonas and D. Urquhart to the effect that the writ of seizure and sale issued in said suit No. 14665, with sheriff's return thereon and with a paper purporting to be an appointment of J. Madison Wells as keeper of property seized thereto annexed, was in existence, and any and all written evidence, record or otherwise, offered by defendants tending to show a state of facts such as is testified to by said Jonas and Urquhart contradicts the averment so as
333 aforesaid made in defendants' answers that no return was made on this writ issued in said suit, because it was impossible for the sheriff to either execute or make a return upon said writ, which writ was burned, etc., etc.

And complainants further show that defendants cannot be permitted to contradict their said allegations so as aforesaid made, and for this reason, in addition to those given in motion to suppress, heretofore filed by them, complainants pray that the testimony and evidence hereinbefore referred to be suppressed.

And, as in duty bound, complainants will ever pray, etc.

(Signed) A. H. LEONARD,
Solicitor for Compl'ts.

Let this motion be filed.
Jan'y 9, 1885.

(Signed) EDWARD C. BILLINGS, *Judge.*

334 *Motion to Suppress in Behalf of the State National Bank. Filed 26th January*, 1875.

MARIE P. EVANS and HUSBAND
vs.
D. URQUHART, THE STATE NATIONAL BANK, *et al.* } No. 7672.

The State National Bank, one of the defendants herein, appearing by the undersigned counsel, now moves the court to suppress the depositions, testimony, letters, and other documents offered and filed herein by and on behalf of the said complainant- and objects to the introduction of the same as evidence herein on the following grounds, to wit:

I. To the deposition of Henry Perkins, upon the grounds stated and reserved at the time said deposition was taken, and upon the further ground that the statements of said witness are for the most part hearsay, repetition of the conversations of third persons, suppositions, irrelevant under the pleadings, statements of the contents of books, documents, and other writings, and therefor secondary evidence and as incompetent.

II. To the depositions of C. A. Weed and J. H. McKee, on the grounds reserved and stated in the cross-interrogatories, and also as being for the most part hearsay, especially Weed's repetition
335 of what Wells told him as supposition, repetition of what others said, and incompetent.

III. To the deposition of Mrs. Wm. Morris, on the grounds reserved and stated in the commission with cross-interrogatories, and on the further ground that the answers of the witness are hearsay and incompetent on all said grounds, especially the answer- to interrogatories Nos. 3 & 4.

IV. To the deposition of Jackson Johnson, on grounds reserved therein and as hearsay and incompetent, and especially his answer to Int.-in-chief No. 4, in not giving the sources of his knowledge, and also as being secondary evidence, the best evidence in this case not having been shown to have been either lost or destroyed, and manifestly hearsay and incompetent.

V. To the deposition of John Clements, on the grounds stated before the examiner and noted; also as not being the best evidence of the facts sought to be proved—as hearsay and incompetent and contradictory.

VI. To the depositions of Daniel W. Shaw, R. C. Hutchinson, Thomas Keegan, Richard H. Hall, John M. Martin, C. W. Kilbourn, Jas. E. Luntz, Angelo V. Ward, & E. E. Norton, on the grounds reserved and stated as to each severally in the record; also as being hearsay and as stating contents of books and other writings and therefore secondary evidence, and upon the grounds stated to that of H. W. Perkins No. 1, *supra*.

336 VII. To the record No. 304 of probate court, parish Rapides, as being manifestly imperfect.

VIII. To the abstract of the bankruptcy of W. and D. Urquhart as being irrelevent and as *res enter alios*.

IX. To the testimony of Mrs. Marie P. Evans, upon the grounds stated and reserved before the examiner; also as being for the most part mere hearsay and statements of what others had said, and contents of writings, &c., incompetent as evidence against this respondent, and instance among other portions of the testimony of said witness so objectionable her statements of her conversations with her father, with Messrs. Morgan, Lapeyre, and those alleged to have occurred with Mr. D. Urquhart, in which he is represented as saying that he brought the suit for the bank, was the cat's paw of the bank, was acting for the bank; that he had nothing to do with the plantation, &c.

X. To deposition of John M. Martin, on grounds above stated in No. I, and because obviously incomplete or unfinished, there being no cross-examination and no waiver of cross-examination.

(Signed) J. McCONNIEL, *Sol.*

337 *Consent of Counsel in Regard to Filing Eight Mortgage Notes. Filed 30th March*, 1885.

MARIE P. EVANS
vs.
DAVID URQUHART & STATE NAT'L BANK *et al.* } No. 7672.

By consent of counsel the eight mortgage notes made by S. D. Linton, described in the answer of the State National Bank, are produced and filed as evidence in behalf of said bank, being the same notes endorsed by J. F. Dick, d'y clerk, as sued on and filed Sept. 26, 1866, in suit No. 17703, in the fourth district court of New Orleans.

(Signed) A. H LEONARD,
Solicitor for Compl't.

338 *Supplemental Motion to Suppress in Behalf of the State National Bank. Filed 23d April*, 1885.

MARIE P. EVANS & HUSBAND
vs.
STATE NATIONAL BANK *et al.* } No. 7672.

The State National Bank, one of the defendants herein, and by leave of the court first obtained, makes the following additional & supplemental motion to suppress the testimony offered herein by complainant, to wit:

That the testimony and statements, all and singular, of Jackson Johnson, John Clements, Mrs. William Morris, Henry Perkins, and others, aver-ing in substance and effect that the Louisiana State Bank was the plaintiff named in one of two suits or writs of seizure & sale

against Stephen D. Linton, under which the Quantico plantation & certain cotton and other property thereon was seized by the sheriff in 1863, and other statements of like import, be suppressed because the said testimony is contrary to and in direct conflict with the averments in the original bill filed herein by the complainants, in
339 which it is alleged that the seizure of the said plantation and property was made by David Urquhart, under judicial process issued on or about the 15th of March, 1861, and that said complainant is estopped and prohibited from offering testimony contradictory to the averments so judicially made by her in these pleadings.

For the above reasons, in addition to those heretofore given, respondents pray that the testimony of said witnesses and all others of like import, contradictory to the pleadings of complainant as aforesaid, be suppressed, and for general relief.

(Signed) J. McCONNELL,
Sol. for State Nat'l Bank.

Let this motion be filed.
New Orleans, April 23d, 1885.

(Signed) EDWARD C. BILLINGS, *Judge.*

340 *Continuance.*

Extract from the Minutes, November Term, 1884.

MARIE P. EVANS *et als.*
vs.
STATE NATIONAL BANK *et als.* } 7672.

MARCH 30TH, 1885.

Ordered that this cause go over, to be tried in May next before his honor W. B. Woods, associate justice of the Supreme Court of the United States.

Cause Set for Trial.

Extract from the Minutes, November Term, 1884.

MARIE P. EVANS
vs.
STATE NATIONAL BANK *et als.* } 7672.

APRIL 18TH, 1885.

On motion of James McConnell, solicitor for defendants, it is ordered that this cause be set down for trial before Justice Woods Wednesday, May 6th, 1885, at 11 o'clock a. m., and that A. H. Leonard, Esqr., solicitor for complainant, be notified thereof.

341 *Continuance.*

Extract from the Minutes, April Term, 1885.

MARIE P. EVANS *et al.*
vs.
STATE NATIONAL BANK *et al.* } 7672.

MAY 6TH, 1885.

On motion of James McConnel, solicitor for defendants, it is ordered that this cause go over until to-morrow, and that A. H. Leonard, solicitor for complainant, be notified thereof.

342 *Continuance.*

Extract from the Minutes, April Term, 1885.

MARIE P. EVANS *et als.*
vs.
STATE NATIONAL BANK *et als.* } No. 7672.

THURSDAY, *May 7th*, 1885.

On joint motion of counsel for the respective parties, it is ordered that this cause go over to Thursday, 21st instant, at 11 a. m.

Order Re-assigning Cause for Trial.

Extract from the Minutes, April Term, 1885.

MARIE P. EVANS *et als.*
vs.
STATE NATIONAL BANK. }

THURSDAY, *May 14th*, 1885.

On motion of J. McConnel, of counsel for The State National Bank, one of the defendants in the above-entitled cause, and on suggesting to the court that this cause, assigned for hearing on the 21st instant, cannot be then tried on account of the contemplated temporary absence from the State of his honor Judge Pardee, the circuit judge of this court, it is ordered by the court that said cause be now re-assigned for trial on Tuesday, the 26th day of May, 1885, and that complainant have notice hereof, and the court was adjourned until to-morrow at 11 a. m.

343 Extract from the Minutes, April Term, 1885.

MARIE P. EVANS *et als.*
vs.
STATE NATIONAL BANK *et als.* } 7672.

MAY 26TH, 1885.

This cause came on to be heard at this term on the bill, answer, replication, and other proceedings in the cause. Whereupon the com-

plainants offered the following evidence in support of their bill, to wit: Pl'ffs offer all evidence offered before examiner on behalf of complainants.

Deposition of D. W. Shaw before examiner.
" J. E. Wallace "
" R. C. Hutchinson "
" Thos. Kergan "
" John Clements "
" " "
" Richard H. Hall "
" " "
" John M. Martin "
" Marie P. Evans "
" C. W. Hillborn "
" Jas. E. Zuntz "
" A. V. Ward "
" E. E. Norton "
" Henry Perkins *de bene esse* "
" C. A. Weed by commissioner.
" J. H. McKee "

344 Deposition of Mrs. Morris by commissioner.
" Jackson Johnson "

Agreement to testimony of Jackson Johnson.
Act mortgage, S. D. Linton to W. & D. Urquhart.
Abstract from bankruptcy of W. & D. Urquhart.
Probate record No. 304, suc'n S. D. Linton.
Affidavit J. R. Beckwith & H. B. Kelly.
Minute-kept by examiner from M'ch 8th, 1884, to May 17th, 1884, inclusive.

And The State National Bank, one of the defendants in said cause, offered the following evidence in support of its answer, viz:

Testimony of B. F. Jonas.
" David Urquhart.
" Charles L. C. Dupuy.
" Samuel H. Kennedy.

Record book E. Louisiana State Bank.

Extract from record of proceedings board directors La. State Bank, folios 235, 236, 237, containing, with other proceedings, special military order No. 138, protest of the board, minute of the opening and closeing meetings of the board of military liquidatiors, important minutes of proceedings of the military commissioners of the La. State Bank from 18th June, 1863, to February 3, 1866.

Certified copy act of mortgage from S. D. Linton to W. & D. Urquhart before T. Guyol, notary, December 27th, 1859, together
345 with the eight mortgage notes described in said act for $10,833.33⅓ each, falling due as follows: Four in the year 1862 and the other four in the year 1863, and fully set forth and described in the petition in suit No. 17703, brought Sept. 26, '66, by said bank against said S. D. Linton.

The testimony of J. Madison Wells, taken under commission by

the complainant-, but which, not being offered by complainant-, is offered *ex necessitate* by defendant.

The testimony of J. McConnell, Exhibit Dupuy No. 1, deed of sale, Dupuy to Robinson, 22nd March, 1857, and ratification therein of the complainant-.

Record of suit by Marie P. Evans *vs.* The United States, No. 3107, before the claims commission, opinion and judgment of same, and testimony of Mrs. Marie P. Evans, taken in said suit; also testimony of Nemours Bienvenu, taken in same suit, No. 3107; also—

Record No. 14665, 4th dist. court of New Orleans.
Do. 14708, do. do. do.
Do. 14669, do. do. do.
Do. 14846, do. do. do.
Do. 17703, do. do. do.

346 Transcript of succession of Stephen Duncan Linton, all proceedings and contracts of said bound volume of 403 written pages.

Letter, Stephen Duncan Linton to the liquidating commissioners La. State Bank, dated New Orleans, October 28, 1865, marked complainant-' No. 2.

Letter, dated New Orleans, Sept. 7, 1866, from Mrs. Evans to the La. State Bank, marked complainant-' No. 1.

The bound transcript of suit No. 14665, in the 4th district court of New Orleans, of 21 pages, with all proceedings and papers therein filed as part thereof.

Exhibit marked B. F. Jonas No. 1, being certified copy of record No. 14665, in the 4th dist. c't of New Orleans.

The answer of the bank to the bills of complaint herein and the answers under oath of the bank to the interrogatories therewith filed.

All agreements filed and admissions in the record.

And the cause was partially argued by counsel for the parties respectively, and was continued for further hearing until to-morrow morning at 11 o'clock.

347 *Note of Evidence of Complainants. Filed 26th May*, 1885.

MARIE P. EVANS *et al.*
vs.
DAVID URQUHART *et al.* } No. 7672.

Note of evidence offered by complainants: Pl'ff- offer all evidence offered before examiner on behalf of complainants.

Deposition of D. W. Shaw before examiner.
" " J. E. Wallace " "
" " R. C. Hutchinson " "
" " Thos. Kergan " "
" " John Clements " "
" " " " " "
" " Rich'd H. Hall " "
" " " " " " "

Deposition of Jno. M. Martin before examiner.
" " Marie P. Evans " "
" " C. W. Kilbourn " "
" " Jas. E. Zuntz " "
" " A. V. Ward " "
" " E. E. Norton " "
" " Henry Perkins *de bene esse.*
" " C. A. Weed by commission.
" " J. H. McKee " "
" " Mrs. Morris " "
" " Jackson Johnson by "
Agreement as to testimony of Jackson Johnson.
Act mortgage, S. D. Linton to W. & D. Urquhart.
Abstract from bankruptcy of W. & D. Urquhart.
Probate record No. 304, succession S. D. Linton.
Affidavit of J. R. Beckwith & H. B. Kelly.
Minutes kept by examiner from M'ch 8, 1884, to May 17, 1884, inclusive.

348 United States Circuit Court, Fifth Circuit, E. District of Louisiana.

MARIE P. EVANS and HUSBAND
vs.
DAVID URQUHART *et als.*
No. 7672.

Testimony taken on behalf of the complainants, under the 67 rule of practice of the courts of equity of the United States, before F. A. Woolfley, examiner, duly appointed by said court to take the depositions of witnesses in the above entitled and numbered cause.

NEW ORLEANS, *November 15th*, 1881.

Present: E. H. Farrar and James R. Beckwith, Esqr., for complainants; James McConnell, Esq., for State National Bank, defendant; Thomas Gilmore, Esq., for Lapeyre's heirs, defendants.

DANIEL W. SHAW, a witness produced, sworn, and examined on behalf of complainant-, says:

By Mr. FARRAR:

Q. What is your age?
A. I was born on the 21st November, 1814. I am now sixty-seven years of age.
Q. How long have you lived in Louisiana?
349 A. About thirty years.
Q. Where did you live during the war?
A. In Alexandria, Louisiana.
Q. What were you doing there?
A. I was at different things—trading. I had a coffee-house. I had been deputy sheriff previous to that time for several years.
Q. When were you the deputy sheriff of the parish?

A. From 1854 to 1860.
Q. Where were you deputy sheriff—of what parish?
A. Rapides parish.
Q. Then you lived in Rapides from 1854 until what time?
A. I came away with General Banks' army in 1864, down here.
Q. You came to New Orleans with Banks' army in 1864?
A. Yes, sir. I came on the steamer John A. Grasbeck.
Q. Did you know Mr. Stephen Duncan Linton?
A. I was slightly acquainted with him.
Q. Did you know the Quantico plantation?
A. Yes, sir.
Q. Were you on that plantation at any time between 1860 and 1864?
A. Yes, sir.
Q. How often?
A. I don't think I was there more than twice—that is, passing from Cheneyville.
Q. Do you know J. Madison Wells, Sr.?
350 A. Yes, sir.
Q. Do you know anything about the Quantico plantation having any cotton upon it between the years 1860–1864?
A. Yes, sir. I know there was cotton on it; I saw it.
Q. Did you ever go on that plantation with reference to any cotton there?
A. No, sir.
Q. What became of that cotton, or do you know?
A. It was brought to Alexandria—a great portion of it on the railroad—by Madison Wells during the stay of the Federal army there under General Banks.
Q. Do you know in what capacity J. Madison Wells brought the the cotton there—what authority he had to move it?
A. I did not know at that time.
Q. Do you know who was in charge of the Quantico plantation at the time that cotton was removed?
A. I don't remember.
Q. Do you know how much cotton was removed from the Quantico plantation by J. Madison Wells?
A. There were twenty-five or twenty-six hundred bales come to Alexandria, the greater portion marked "Quantico" or "Q."
Q. Where was that mark?
351 A. It was some on the sides and some on the ends; I think the most of it on the ends.
Q. When you say some twenty-five or twenty-six hundred bales come to Alexandria what do you mean by that? You mean that was all the cotton came there during the stay of Banks' army?
A. No, sir; there was more cotton came there, but not on the railroad, that I counted with Mr. Terry Bourges.
Q. What do you mean by counting it with Mr. Terry Bourges? Explain in full how you happened to count the cotton.
A. The way I came to count the cotton was this: After counting Mr. Bourges' cotton to him that I bought from Enirnen Wells'

plantation I then went with Mr. Bourgess and counted the cotton that came on the railroad from the Quantico plantation every night, until I finished hauling the two hundred bales from Enirnen Wells' plantation that belonged to Mr. Bourgess. They also brought some cotton for Matt. Stafford, another son-in-law of Governor Wells, on this railroad.

Q. Where did the railroad run from?

A. From Alexandria to La Conti, by Bayou Boeuf.

Q. Who built that railroad?

A. I think a company built it first, but Ralph Smith purchased it afterwards, being an engineer, and then it was called
352 Ralph Smith's railroad.

Q. Was not that railroad wrecked during the war or torn up to a great extent while Banks' army was there?

A. I don't know. It was considered out of order, but run trains on it.

Q. Do you know of any repairing that was done to that road at that time by any one?

A. I do not.

Q. How much cotton did you count in Alexandria at the railroad which had come from the Quantico plantation with Mr. Bourges?

A. I think I counted about twenty-five or twenty-six hundred bales, including Matt. Stafford's two hundred. I am sure he had that or about that. He was another son-in-law of Governor Wells.

Q. The two hundred bales that you hauled for Bourges yourself—where did you haul them from?

A. From Enirnen Wells' plantation, four miles from Alexandria, back of the Springs plantation.

Q. What did become of that cotton after it had come to Alexandria?

A. I don't know. I know that it went on the different boats there; that is all I know. I cannot remember one of them. It was ranged all along the *the* river with gunboats and transports,
353 and whoever took that I don't know; but they went away from there on different boats. I don't know the names of them.

Q. You spoke of having been on the Quantico plantation twice between the years 1860 and 1864. Did you see any cotton on the place while you were there?

A. I saw cotton there, but it was not ginned.

Q. Wher- was the cotton that was not ginned?

A. In the gin-house.

Q. Was that before or after the burning took place?

A. That was before.

Q. When did the burning take place—before the cotton was removed or afterwards?

A. I think the burning took place afterwards. I am not positive; about the time the army was leaving there—coming away from Alexandria.

Q. After this cotton had been removed?

A. I think so. It might have been during that time or at that time. I heard of it; that is all.

Q. Did you see any cotton on the place, or were you back on the place after this cotton was removed?

A. No, sir; I was not there then.

Q. You were there only before the cotton was removed?

A. Before the cotton was removed.

354 Q. You saw the cotton there?

A. Yes, sir; I saw the cotton there. I don't know how much. I did not go on that business; but I remember seeing a portion of the cotton on the plantation. I cannot say how much.

Q. Did you ever have any conversation with J. Madison Wells about this cotton?

A. Yes, sir.

Q. When?

—. The last conversation I had with him was at the Oviatt House about eight months or a year ago, perhaps.

Q. The Oviatt House is in this city?

A. Yes, sir.

Mr. Gilmore objects to the witness stating any conversation with Madison Wells to effect any persons he represents.

Mr. McConnell, for the State National Bank, defendant, concurs in this objection, or to any testimony of the witness relating to conversations with J. Madison Wells; and it is agreed by co-nsel that the grounds of objection may be stated hereafter in a motion to suppress as if made now.

Q. What was that conversation; what did he say about it?

A. He told me that he was sued for this cotton—that is, in connection with others—and that he was only the agent in it,

355 and they should never have sued him; that his testimony would be worth more to them concerning this cotton than they could gain by suing him, because he was simply an agent to attend to it. That is how I came to find out about his agency.

Q. What did he say? Go on and tell.

A. I cannot remember what he said, but that is the essence of it—that he was agent and really not the owner.

Q. And not responsible for that reason?

A. Yes, sir; not responsible for that reason.

Q. Did he deny having shipped this cotton from the Quantico plantation?

A. He did not. He said he shipped it; and, as I knew all about it being there, I told him so, because I was there hauling every day. I only hauled sixteen bales a day from Evrimen Wells' plantation. I was some time hauling it, and I saw it every night when they hauled it on the railroad, and I assisted in counting it with Mr. Bourges.

Q. Why did you count that cotton every night?

A. To see how much we brought in.

Q. To see how much you had hauled in and how much the railroad had brought in?

A. Yes, sir; with Mr. Bourges. I took his receipt for what
356 I hauled, and then went with him and counted what came in on the railroad.

Q. These transports that you speak of, they did not stay there after the army left?

A. No, sir; they came down with the gunboats. As we started down it was every other boat—say a gunboat went first, then a transport next, then a gunboat next, and so on. Every transport was in between a gunboat as far as it was possible for them to be so, because the other army was following them, fighting them all the way, almost at every bend in the river. The Groesbeck was shot into several times, and they came near hitting me several times and several others, although she had the signal up as an hospital boat. But they fired into her at two or three different points along the river; and that is about the way they were situated in the river coming down.

Q. When that fleet got to the mouth of the Red River did the whole of it come to New Orleans or did part come to New Orleans and part go up the river?

A. When we got to Old River, opposite Turnbull's Island, we turned to the right and went down the Atchafalaya. All the steamboats were collected together and formed a bridge at Simmsport, on the Atchafalaya, and there was a road made across the boats to
357 transport the army across. As they came from Yellow bayou they had a severe fight, and they brought in several who were wounded, and several legs were taken off by the doctors on the boat. After the road was broken up there and the army was across the boat went down to Turnbull's Island and then to Morganza. We came down to Morganza and we lay there four or five days. Some boats went up the river and some went down from Morganza, but the greater portion of the fleet and the Groesbeck, which I was on, remained at Morganza four or five days, until the army was across on the opposite side of the Mississippi river from Morganza. After that was done then we came down. There were some transports went up the river and some down. There was one that I had five or six hogsheads of sugar on and five or six bales of cotton. The Rob Roy I know came down, because it was hard for me to find my sugar and cotton when I came down. Four or five days after I left there I arrived here and commenced looking after my little plunder. Governor Wells remained there all the time at Morganza, and a great many of us from Alexandria.

Q. Did Governor Wells come down on the fleet too?

A. Yes, sir.

358 Q. He did not stay at Alexandria after the Federal army left?

A. No, sir.

Q. About how many transports came down to New Orleans of your positive knowledge?

A. I think there were twenty-three or twenty-four.

Q. Did all of them have cotton on them?

A. I cannot say whether they had or not. There was a great

number of them, but I cannot say whether they all did have it on or not. I don't think the Rob Roy had much over three or four from me and five or six from somebody else.

Q. Did you see any of that cotton marked "Q" in New Orleans?

A. I did not.

Q. You say the last conversation you had with Governor Wells. Did you have more than one conversation with him about this matter?

A. Yes, sir.

Q. When did you have the other conversation?

A. I had a conversation with him at Alexandria, at the time he was bringing this cotton there.

Mr. McConnell and Mr. Gilmore object on the same ground heretofore stated.

Q. What did he say?

A. He told me there that he was bringing this cotton in—
359 all his cotton; he was doing the best he could to get all his cotton in.

Q. Did he tell you who he was acting as agent for?

A. No, sir.

Q. When you had this conversation with him in the Oviatt House?

A. Yes, sir; he did; but not up at Alexandria. I did not know but what it was all his cotton from what he told me, but the last conversation I had with him concerning this cotton was that he was an agent.

Q. Did he say who he was agent for?

The same objection made and reserved by Mr. McConnell and Mr. Gilmore.

A. He told me he was the agent of the bank.

Mr. McConnell, on behalf of the State National Bank, defendant, objects to the statements of the witness and to all testimony given with regard to conversations *with* J. Madison Wells with the witness on rights heretofore reserved and accorded and specified, *now* the following ground of objection, among others: First, that the testimony is hearsay; that it is conversation out of the presence of defendants; that it is not the best evidence of the facts sought to be proved; that it is no legal evidence whatever so far as the bank is concerned, and he asks the ruling of the examiner on this point;
360 that the testimony be not allowed to go on the record—a statement thus sought to be pro-ed by a party not under oath, and no verbal statement of any party can be introduced in evidence under the pleadings in this case against the defendant bank; that any evidence whatever of agency against the bank to bind it must be shown to have been given by the authority of the board of directors in writing or been authorized by a reso-tion of the board of directors of the bank.

Mr. McConnell states to the examiner here present that he desires him to rule out the evidence, which he submits is clearly illegal, in

order that unnecessary trouble may be saved in making a motion to suspress the testimony.

Whereupon Mr. Farrar, solicitor for complainants, states to the examiner that an examiner in equity who is appointed by the court simply to take testimony and register documents has no judicial power with reference to the determination of whether the evidence adduced before him is legal or illegal under the issues in the
361 case; that in this case the J. Madison Wells who made the admissions is one of the defendants to the bill, and is charged with a fraudulent conspiracy with the defendant bank against the complainants.

Mr. McConnell objects further that it does not appear that J. Madison Wells, the defendant refer-ed to by the cou-sel for the complainants, has had any legal notice or return of notice in regard to the taking of this testimony, and is not represented, either personally or by co-nsel, in this proceeding to object to the testimony.

Mr. FARRAR to Mr. McConnell:

Q. Do you represent J. Madison Wells in this case?

Mr. MCCONNELL: I don't represent J. Madison Wells in this case, but I see by the record that he was represented by Judge Merrick, and I understand since that he was represented by Mr. John Ray. Judge Merrick so informed me.

The EXAMINER: Under the rules of practice in equity prescribed by the Supreme Court of the United States I have no power
362 to deal with the question of the irrelevancy or relevancy or the incompetency of any testimony taken. The witness will answer such questions as are propounded, subject to the exceptions of the opposite party, which will be certified to the court, to be there dealt with upon motions to strike out or upon other grounds touching either competency or admissability. That I believe to be the scope of my authority as examiner under the rules.

Q. Whom did he say he was agent for?
A. The bank.
Q. What bank?
A. He did not state what bank it was.
Q. He just said he was an agent for the bank?
A. Agent of the bank.

Cross-examined by Mr. MCCONNELL, for State National Bank, defendant:

Q. Where is your present residence?
A. I have been living out on the Amite—for the last two months working there.
Q. Working at what?
A. Working in the saw-mill of Jesse H. Massey.
Q. In what capacity?
363 A. I was night-watchman.
Q. Were you hired there by the month?
A. Yes, sir; I was.

Q. You worked there how long?

A. About two months, and I quit. It hurt my eyes. I have been afflicted with sore eyes, and it hurt my eyes and I quit.

Q. What is your present occupation?

A. I have none. I have been afflicted with sore eyes four years, and I lived with my friends on the coast, Mr. Darby. I taught a little school for awhile, and I worked a garden last summer, and then I came here and worked with Massey for two months.

Q. Where is your home?

A. On Red River, in Grant parish, where I make my home.

Q. What is your post-office address in Grant parish?

A. Colfax.

Q. You said that you were twice on the Quantico plantation, between the years 1860 and 1864.

A. Yes, sir.

Q. State when was your first visit there.

A. It was in 1862, I think.

Q. What time in 1862?

A. I think it was in September or about that.

364 Q. Either August or September?

A. Yes, sir.

Q. When was your second visit there—between 1860 and 1864?

A. I think it was in June, 1863. About the middle of June, 1863, I think it was.

Q. When was it you saw the twenty-five or twenty-six hundred bales of cotton on the plantation?

A. I did not say that I saw the cotton on the plantation.

Q. You said you saw cotton on the plantation?

A. Yes, sir; that was not ginned.

Q. The only cotton that you ever saw on the Quantico plantation when you were on the plantation was cotton in the gin-house not ginned?

A. I saw it growing also, and I saw it in the gin-house as well.

Q. You never saw any cotton on the Quantico plantation in bales?

A. No, sir.

Q. When was it that you counted these twenty-five or twenty-six hundred bales of cotton in Alexandria that you state came from the Quantico plantation by the railroad?

A. It was when Banks' army was there—in April, I think, 1864.

Q. In April, 1864?

365 A. I think so. It was when the army was there. I think it was in April, along about the middle; I cannot say the time.

Q. Are you certain it was in 1864?

A. Yes, sir.

Q. And it was in April or about in April?

A. Yes, sir; some time in April; I don't remember what date.

Q. What distance was Quantico plantation from Alexandria?

A. It was about sixteen miles.

Q. You don't know of your own knowledge that these twenty-five or twenty-six hundred bales came from the Quantico plantation?

A. Of my own knowledge I don't know.

Q. You only heard so?

A. It was told to me by Governor Wells and Terry Bourges, that marked the cotton. They had come with the cotton and a man by the name of Carrigan.

Q. What was the mark on the cotton that you say you saw?

A. There was some that I remember that was marked "Quantico," but the most of it was "Q."

Q. Did it have any mark around the "Q?"

A. I don't remember whether it had or not.

Q. How were the majority of the bales—"Q" or "Quantico"?

366 A. "Q."

Q. Were the marks on the sides or on the ends of the bales?

A. On the ends of the bales most of them and some on the sides of the bales.

Q. How long had this twenty-five or twenty-six hundred bales been brought to Alexandria before Banks' army left there and the fleet of boats left which you say took away the cotton?

A. Well, I think it was about a week before the army left—that is, being brought.

Q. It was being brought while the army was there?

A. Yes, sir.

Q. How long was it before the army left and the fleet left, as you state, that took the cotton away, that the cotton was brought there?

A. How long before?

Q. Yes.

A. It might have been two or three days or four or five, but I think it was there two or three days. At the time of the battle of Mansfield they all began to get ready to leave there, but close to the time of bringing the cotton in.

Q. How long did General Banks' army occupy Alexandria?

367 A. I cannot tell exactly how long; it was some three or four weeks, or longer.

Q. None of the cotton was brought in before General Banks occupied Alexandria?

A. No, sir.

Q. What was the quality of the cotton in bales that was brought to Alexandria during the time General Banks' army was there? How many bales, from all quarters?

A. I could not tell you that.

Q. Well, about how many?

A. I cannot tell you, for I could not make an estimate. It was being hauled all around by different persons.

Q. There was a great deal of it?

A. Yes; a great deal of it.

Q. Could you not give me some idea?

A. No, sir; I could not approximate.

Q. Whereabouts was this cotton stored that was brought in from

the Quantico plantation, as your have described, twenty-five or twenty-six hundred bales?

A. Right at the railroad depot, where the boats lay alongside in the river. The depot was right on the river and the boats all lay right up along the bank of the river at the depot. The cars came right to the bank of the river and threw the cotton either way.

Q. Did not General Banks leave Alexandria in conse-
368 quence of the defeat of his army?

A. I think so.

Q. Then, what time after that defeat did his army and this fleet of boats leave Alexandria?

A. It was about—I think it took the army four or five days to get from Mansfield down to Alexandria, and they left immediately on their arrival there.

Q. And very hurriedly?

A. Yes, sir.

Q. They were pressed by the Confederate army leaving?

A. Yes, sir.

Q. And everything was hurry and confusion?

A. A great deal was hurry and confusion; and the town being set afire in the day—about twelve or one o'clock the day they started—hurried them more and caused more confusion.

Q. Who set fire to the town the day they started?

A. I think a portion of the Federal army, by order. I think the first fire that was in Alexandria was in the house of Mr. Malley, next to Odd Fellows' Hall, then the store of Rosenthal and Grey. I was on the Groesbeck at the time.

369 Q. There was a great deal of property destroyed in Alexandria when the Federal army left?

A. Yes, sir.

Q. Was not some cotton burned in that fire?

A. There was some cotton, but how much I cannot say.

Q. But when you left Alexandria you saw the cotton there?

A. I saw cotton on the bank above the ice-house.

Q. Was the cotton burning when you left?

A. No, sir; I did not see any.

Q. You learned so?

A. Well, I don't know. I did not see any.

Q. But, leaving in the transport, you saw the cotton on the levee?

A. I saw cotton in sack- and in bales on the levee, but in the upper part of the town, at Sullivan's Landing, there was the most. There was a man named Darling bought some sacks of meal, and I saw him hauling them.

Q. The fleet of boats did not take all the cotton?

A. They would have had time, but the order was issued. I did not see it, but they would not take on any more cotton. It ordered them not to ship cotton.

370 Q. You have stated that you don't know on what boats of the fleet this cotton from the Quantico plantation was shipped.

A. I don't know. I might if I heard the names, but of my own knowledge now I don't know.

Q. You did not see it go on the boats?

A. I saw them rolling cotton on the boats out of this lot of cotton, but I don't know the names of the boats.

Q. Were you supervising the shipment of this cotton?

A. No, sir.

Q. Were you attending to it?

A. No, sir.

Q. Were you not sup-rintending your affairs to get away in a hurry?

A. No, sir; I could get my affairs r-ady at any time, but I was not paying special attention to that cotton at that time.

Q. Do you know of your own knowledge whether that cotton was shipped on that fleet?

A. Yes, sir; I do, because I noticed that all this cotton was gone away from this landing. We often talked about it.

Q. Discribe where that landing was.

A. At the lower part of the town, at the end of the railroad, right on the river, is the landing and the railroad depot.

371 A. The cars ran right into it and unloaded in the warehouse; but this was thrown each way right by the warehouse and the railroad.

Q. It was not in the warehouse?

A. No, sir.

Q. None of it?

A. No, sir; it was a small warehouse that Tom Smith built to put freight in that came up the river.

Q. There was no cotton in the warehouse at all?

A. I don't think there was any; it was lying on the ground.

Q. Do you know there was none?

A. I don't know. There might have been, but I did not count any there. It was all on the ground that I counted.

Q. You counted it when it came in on the railroad?

A. Every night I went with Bourges and counted it after him. He got on the cotton and walked it.

Q. Are you able to say what proportion of cotton that was in Alexandria was taken away by that fleet of boats?

A. I cannot tell you how much.

Q. Tell me as near as you can.

372 & 373 A. There was some considerable cotton left there; what came after I don't know. I suppose one-half or two-thirds was taken after it came to Alexandria.

Q. How many bales had any of the fleet coming down?

A. I don't know.

Q. How many bales was in Alexandria before the fleet commenced to move?

A. I can not say.

Q. Then why do you say one-half or two-thirds was taken?

A. I don't know. I just suppose it was so.

Q. Then you don't know only from general observation?

A. That is all.

Q. How is it that you got your own things—that you state that when you got to New Orleans to look after your own plunder how it was so mixed up that you did not know where it was?

A. I shipped it on the Rob Roy to bring down and I went on the Groesbeck, and the Rob Roy left Morganza before the Groesbeck did, and the Rob Roy came down some five or six days before we did; then I had to go to the Rob Roy and hunt up the officers and find out where my cotton went to and my sugar.

Q. What did your plunder consist of?

A. Six hogsheads of sugar and three bales of cotton.

374 A. Three *of* four bales. I am not sure now. When I used the word "plunder" I mean my personal effects. The quartermaster took my sugar and I had hard work to get it back again.

By Mr. FARRAR:

Q. You spoke of a man named Carrigan.

A. Yes, sir.

Q. Where is that man?

A. He is in Alexandria. I learned it from Mr. Chapman and Mr. David. Both gentlemen were here. They live in Pineville, and they told me Carrigan lived there.

By Mr. GILMORE:

Q. You are about to leave the city?

A. Yes, sir; I am going to Texas on a little business.

Q. Are you going to stay?

A. No, sir.

Q. What part of Texas are you going to?

A. I am going to Austin; I am going on a visit.

Q. When will you return?

A. In eighteen or twenty days.

Q. Where is your home?

A. I will go home to Colfax, and will probably remain there after my return from Texas.

375 Q. If you have a home at all, it is in Colfax?

A. Yes, sir.

Q. How long has it been since you were at Colfax?

A. Four years, about. I have been under Dr. Beard with my eyes for sixteen months. It is four years now since I have been nearly blind.

Q. How long did you live in Alexandria?

A. Sixteen or seventeen years.

Q. You kept a saloon?

A. Yes, sir; for some time.

Q. You have not resided in Alexandria since you left there in 1864?

A. Yes, sir; I lived there about a year since I came from Colfax. I was under Dr. Carson there with my eyes, and then I came down to Dr. Beard.

Q. Who came from Alexandria with you? What residents of

A. Somewhere along there. I don't know when.
Q. Under what circumstances did you meet him?
A. I went to his office.
Q. With whom?
A. With Governor Wells.
Q. For what purpose?

379 Mr. McConnell objects to this question on behalf of the State National Bank on the ground that its answer would be irrevelant as against the bank and any conversation between the parties would be hearsay evidence.

Mr. Gilmore joins in the above objection, and to all conversations with Madison Wells, for the reasons assigned in the testimony taken yesterday.

Mr. McConnell further objects to the answer to the question propounded stating any conversation with J. Madison Wells or Urquhart on the ground that they are hearsay and on the grounds stated in the objections heretofore made to similar testimony.

Mr. Gilmore joins in the above.

Q. For what purpose did you go to his office with Governor Wells?

A. He asked me to step with him a few minutes to some office to witness whatever might transpire. We went into Mr. Urquhart'-office. I knew nothing of the object of his visit before getting there. He desired of Mr. Urguhart authority to bring away the cotton from the Quantico plantation—Mr. Urguhart, who was present. I think, if I am not mistaken, his name was James Urguhart, but I
380 don't know, but it was another Urguhart different from this David.

Q. The two Urguharts were present?

A. I don't know whether this Urquhart was present, but it was some Urguhart. He stated that so far as they were concerned that the matter was out of their hands; that it was in suit in the parish of Rapides; that they were on the paper to a large amount, but that it was all in the hands of Mr. J. K. Elgee, and anything that Mr. Elgee would say or do in the matter or any authorization which he would give would no doubt be satisfactory, certainly it would to them, and no doubt to the parties who held the paper; I think some bank. They claimed to have a residuary interest in the matter in some shape, only to see it finally collected in order not themselves to be bound ultimately on the papers; it seems that they were indorsers or something.

Q. What else did they say between Urguhart and Wells about the cotton?

A. Immediately after that statement Mr. Wells and myself left. I do not remember of any other conversation with regard to any other subject than that.

Q. Did you ever have any subsequent conversation or
381 transaction with J. Madison Wells with regard to this cotton of the Quantico plantation?

A. Yes, sir. I had often conversations with him long since then.

Q. What had been the subject of these conversations? What was said about that cotton?

Mr. Gilmore objects to the conversation on the same ground as heretofore stated—first, that they are hearsay; next, that Wells was not sworn; and, third, it is not the best evidence.

Mr. McConnell, on behalf of the State National Bank, joins in the above objections and to any answer that the witness may make to this or any similar question on the above grounds and on the grounds heretofore stated to similar testimony.

Q. What has been the subject of these conversations? What was said about that cotton?

A. Well, soon after, perhaps six weeks after, the arrival of the cotton here, perhaps some time in June, 1864, or the latter part of May or June, 1864, I talked to him with regard to this cotton, and
382 he refused at that time to give me any information in the matter. Mr. Jehu Perkins, for whom I had a suit against J. M. Stafford, called upon me and requested me to get a final settlement in regard to the Quantico cotton.

Mr. Gilmore objects for the reasons stated yesterday with regards to conversations with Wells and Urquhart.

Mr. McConnell also objects to any repeti-on by this witness of conversations with Mr. Jehu Perkins or anybody else on the ground now stated and on the grounds heretofore made to similar testimony of the witness Shaw and the present witness.

Q. Go on with your statement.

A. I wrote a letter to Governor Wells demanding a settlement, which he peremptorily refused in his answer. I delivered that letter to Mr. Perkins.

Q. Do you know anything of your own personal knowledge about the arrival of any cotton in New Orleans, in the possession of J. Madison Wells, from the Quantico plantation in the year of 1864?

A. Except from hearsay. I did not see it.

Q. Did you ever hear J. Madison Wells say anything about
383 that cotton after its arrival or at the time of its arrival?

A. He never would give me any satisfaction with regard to the matter. I had sought to get some report of the matter, but never could get any. He never would answer any question in regard to the matter, although I frequently broached the subject, but he would always evade any question I proposed to him.

Q. Did you know Mr. J. M. Lapayre?

A. I am not acquainted with him.

Q. Do you know of Governor Wells selling any cotton in New Orleans after he returned from the Red River expedition with General Banks?

A. Not personally.

Q. Who was the consignee, or do you know who the consignee was, of the cotton that Wells brought down here with him?

—. It was Weed, Withers & Co. I have forgotten now the errant I went there upon for Governor Wells.

Cross-examined by Mr. McConnell:

Q. You stated that you came from Alexandria to New Orleans in 1863. In what month?

384 —. I think it was in the month of August.

Q. How did you come down from Alexandria to New Orleans—in what boat or by — conveyance?

A. I came to the mouth of Red River and got on one of the transports.

Q. Did you return to Alexandria again after that?

A. No, sir; I did not.

Q. You say that General Banks' army was twice in Alexandria?

A. You asked me if I returned there. I did, but not until 1873.

Q. What time elapsed between these two visits of Banks' army to Alexandria?

A. I only know of his second expedition up there historically. I was not present at the time. The interval between the two expeditions, as near as I now remember, was, I think, some time in the spring of 1862. He went up there, and Taylor's army retreated as far as Natchitoches, and he turned round and came to Port Hudson—to the Mississippi river.

Q. What was the interval of time between the two visits of Banks' army to Alexandria?

A. I would suppose nearly a year; about that.

Q. When was the last visit of Banks' army to Alexandria?

A. I would take it that he must have been there about the

385 latter part of March and the first of April. On the 22nd day of February he was at Franklin; the main portion of his army in St. Mary's parish, about to move up the Teche on that expedition.

Q. You know nothing of what took place up there, at Alexandria, before and when Banks' army remained there; you were not there?

A. No, sir; I was not.

Q. You were asked the question who the consignees here were of the cotton that Governor Wells brought down from the Quantico plantation, and you answered Weed, Wither & Co.

A. That is from what I understood.

Q. Then you don't know anything of your own knowledge?

A. I positively could not say. I suppose they were. I went there for Wells.

Q. Do you know of your own personal knowledge that Weed, Wither & Co. were the consignees of the cotton that Wells brought down from the Quantico plantation?

A. Only from the fact of going around there to see with regard to some account.

Q. Then you don't know of your own personal knowledge?

—. No, sir. I did not see them render an account, nor did I see any cotton there.

386 Q. Do you know of your own personal knowledge that Governor Wells brought down any cotton from the Quantico plantation at any time?

A. I do not.

Q. Do you know that Governor Wells brought down any cotton whatever to the city of New Orleans during the year 1864, of your own personal knowledge?

A. I do not.

Q. Why, then, do you say that Weed, Withers and Co. were the consignees of the cotton that Wells brought down to the city of New Orleans?

A. Because I went to them on more than one or two occasions, of errands with relation to this cotton.

Q. But you have no personal knowledge that he, Governor Wells, brought down any cotton?

A. Not at all.

Q. You said that you wrote a letter to Governor Wells demanding to know something about cotton that he brought here. Do I understand you to say that?

A. Yes, sir.

Q. Did you write that letter in the capacity of attorney for anybody?

A. For Jehu Perkins.

Q. Was not Mr. Jehu Perkins in the city?

A. Yes, sir; he was.

387 Q. Were not the courts in session here at the time which would have enabled you to have obtained redress or Perkins to have obtained redress from Wells for any cotton that was belonging to him?

A. Of course the courts were open.

Q. Were you not an attorney, practicing in the courts yourself?

A. I was.

Q. Why did you have recourse to these courts for the cotton if you was satisfied or Perkins was satisfied that Governor Wells brought down cotton that was not belonging to him?

A. Perkins did not want me to bring a suit. He desired me to write a letter to Wells demanding a settlement about the cotton brought from the Quantico plantation. He did not ask me to bring a suit.

Q. That was for the cotton brought from the Quantico plantation?

A. Which Perkins claimed had been brought from the Quantico plantation.

Q. And yet he did not press the matter further; he did not go to the courts?

A. There was no suit, that I am aware of, ever brought with regard to the matter.

Q. How long was that that you wrote that letter after the supposed arrival of the cotton in this city?

388 A. I could not positively say. I judge it must have been some time in the month of June.

Q. My question is, how long was it that you wrote that letter to Governor Wells after the supposed arrival of the cotton from the Quantico plantation to this city?

A. It could not have been more than five or six weeks, I should judge. It may have been a little longer. I could not say positively, but it could not be over six weeks.

Q. Have you any knowledge of any suit being brought at that time in this city with reference to the cotton that came from the Quantico plantation?

A. I never had any connection with one myself——

Q. That is not the question. Have you any personal knowledge of a suit having been brought about that time for the cotton that was brought from the Quantico plantation?

A. I don't know that I have had any knowledge of any brought about that time. It seems to me that there was in 1866 some endeavor to bring a suit, but I know nothing about it. R. King Cutler may have brought a suit, but I don't know anything about it—whether he did or not.

Q. Do you or not know that the matter of that cotton was
389 compromised between Governor Wells and Mr. Perkins and the money divided between them?

A. I do not.

Q. Or between Mr. Perkins and somebody else?

A. No, sir.

Q. In relation to a small lot of cotton that had come from the Quantico plantation, have you any knowledge of that?

A. No, sir.

Q. Have you any knowledge of any attachment since that was brought in this city under which certain cotton that came from the Quantico plantation was attached?

A. No, sir.

By Mr. GILMORE:

Q. Were you Jehu Perkins' attorney?

A. I have been his attorney.

Q. For what length of time?

A. Up until his death.

Q. Where did he die?

A. I don't know what time precisely he died. He died at Liverpool, I always heard. He left there to see his daughter in France and, I think, he died on his way.

Q. When did he leave here?

A. Well, I cannot say. I think it was in 1865. I would not be positive as to that. Some time in the fall of 1865, as well as my memory serves me.

Q. How long had he been in the city before he left for Europe?

A. Well, I saw him—they had a cotton—here on Caronde-
390 let St. for awhile. I think before that they suspended business. When he was absent the house was J. L. Perkins and Henry Perkins.

Q. They had a cotton and commission house on Carondelet St.?

A. Yes, sir; I think so. It was in the fall of 1865 when he came here. I saw him for about a month, and shortly after he went to Europe, and he died soon after.

Q. When was that cotton-house established?

A. I don't know. I think they were in business all the time from the time I got acquainted with him.

Q. You came down in August, 1863?

A. Well, I did not become acquainted with them until the spring of 1864.

Q. But did that house exist when you came down?

A. I don't know positively.

Q. You think it did?

A. I don't know; that is my impression.

Q. When did that house break up?

A. I don't know.

Q. Where did Perkins come from before the house was established here?

A. I don't know when the house was established here.

Q. Where did he come from when you first saw him?

391 A. I think they came from up the Mississippi river, somewhere about Bayou Sara or Baton Rouge.

Q. Were they in the habit of receiving cotton?

A. I suppose they were, from their being a commission house.

Q. Do you know whether any cotton came consigned to them?

A. I don't know anything about that.

Q. Did they suspend or go out of business?

A. I don't know upon what grounds they went out.

By Mr. FARRAR:

Q. What claim did Jehu Perkins have or assert to this Quantico cotton?

Mr. Gilmore objects, as it is *res inter alias acta.*

Mr. McConnell joins in the above objection on the grounds already stated to similar testimony.

A. He claimed to own three-fourths of all the cotton brought from the Quantico plantation, as the agent of his daughter and her husband under an article of agreement signed, between himself and J. Madison Wells, at Alexandria, in which J. Madison Wells was to get twenty-five per cent. of the net proceeds, as near as my memory now serves me, of whatever cotton was brought from the Quantico place.

392 Q. Who were the parties to that agreement?

Mr. McConnell objects on the grounds heretofore stated to similar testimony, and on the further grounds that the agreement is the best evidence and should be produced.

Q. Did you ever see that agreement? Was it in writing or was it verbal?

A. I held it from that time up until the yellow fever, in 1866. I had that agreement in my possession.

Q. What became of it then?
A. Doctor Perkins came to me for it. It was while I was in bed.
Q. And you delivered it to him?
A. Yes, sir; I delivered it to him and he delivered it to R. King Cutler, so I understood. I never saw it in R. King Cutler hands.
(Signed) J. E. WALLCE.

Sworn to and subscribed before me November 16, 1881.
F. A. WOOLFLEY, *Examiner.*

393 R. C. HUTCHINSON, a witness produced, sworn, and examined on behalf of complainant-, says:

By Mr. FARRAR:

Q. Where do you live?
A. I am living at present in Mississippi City.
Q. On what business are you engaged in there?
A. Keeping a little hotel there now.
Q. What business were you engaged in in the years 1863 and 1864?
A. I was in the secret service of the United States Government.
Q. In what capacity?
A. General Sherman sent for me at Vicksburgh and asked me to go with the expedition up the Yazoo river to look out for cotton and the loyal men—point out such cotton as might be liable to seizure—and after we came back he sent me off to Natchez and from there to New Orleans. We had scouts running through the lines and getting all the information they could for the use of the army.
Q. Were you a regular commissioned officer in the service?
A. No, sir; I was under Sherman and other generals—Hubbard.
Q. Were you in New Orleans in 1864 when Banks' army returned here?
A. Yes, sir; about the time he returned.
394 Q. Do you know J. Madison Wells?
A. I saw him two days ago.
Q. Do you know anything about some cotton that was brought to New Orleans some time during the year 1864 from Red River, that purported to come from the Quantico plantation in Rapides parish?
A. I learned there was a lot of cotton belonging to the Confederate army——

Mr. Gilmore objects to the above as hearsay.

WITNESS: I had information that there was a lot of Confederate cotton brought down by Banks' army from the Quantico plantation and sold by Mr. Linton.

Mr. McConnell objects as above, and also to the further statements of the witness on this subject on the grounds stated to the testimony given by the other witness.

WITNESS: I went down to C. A. Week & Co. and told them that I understood they had a lot of Confederate cotton and wanted to ex-

amine it. He asked me what cotton it was, and I told him it was the cotton that Mr. Linton had sold to the Confederate
395 Government, and he said that Mr. Linton could not sell the cotton; that it was under mortgage to the bank and seizure.

Mr. McConnell objects on the grounds above stated, and on the further ground that no conversation and no parole proof can be introduced to show a seizure in court. It must be record evidence, and the best evidence on that subject is called for. Conversations between the witness and Mr. Weed is not evidence in this case.

WITNESS: They produced some documents which showed that Mr. Linton had received $80,000 on this cotton, and that when they came to take possession of it they found it in the hands of a custodian. Mr. McKee wanted to get his money and Mr. Perkins gave him an order for four hundred bales of cotton in place of it.

Q. Did you make any seizure of the cotton?

A. I did not; they satisfied me from the documents they had that it was not Confederate cotton, and consequently I did not do anything more.

396 & 397 Q. Did C. A. Weed tell you for whose account the cotton was consigned to them?

A. He said it was under mortgage and seizure by the bank and it could not be sold.

Mr. McConnell objects on the ground already stated to similar testimony and as being irrelevant and hearsay.

Q. How much cotton was there in that lot?

A. I understand that the cotton Mr. Linton sold was two thousand bales.

Mr. McConnell objects as above.

Q. How much was in the lot that came here?

A. I don't know what was in the lot that came here. I was tracing the two thousand bales when I went to see Mr. Weed.

Q. Which was it, Weed & Co. or Weed, Withers & Co.?

A. Weed & Co. Weed & Co. was Weed & McKee, upstairs, in the cotton business, and Weed, Withers & Co. was Mr. Weed and Mr. Withers, down-stairs. They were all the same, except that Mr. Withers, down-stairs, had nothing to do with the business upstairs.

Q. Which concern did you go to?

A. C. A. Weed & Co., upstairs.

Q. Where was their office, then, at that time?

398 A. I think at the corner of Tchoupitoulas and Gravier or Tchoupitoulas and Common, I don't know which; somewhere in that neighborhood. I don't know the exact location of it.

Q. When you speak of Mr. McKee, the Confederate agent, do you mean the partner in the firm which you speak of—C. A. Weed & Co.?

A. No, sir; that was a Mr. McKee a cousin of his—the agent of the Confederate Government.

Q. Where was he at that time?

A. It think he was up in Louisiana somewhere.
Q. In the Confederacy?
A. Yes, sir.
Q. You have not stated distinctly the transaction with reference to this cotton about which it was claimed to have been sold to the Confederate Government. Please be a little more distinct about that.
A. My information was that Mr. Linton sold his entire crop of two thousand bales of cotton to Mr. McKee, and he was paid $80,000 for it on account.

Mr. McConnell objects on the grounds heretofore stated.

Q. Mr. McKee, the agent of the Confederacy?
399 A. Yes, sir; he came to get the cotton and found it under seizure and a custodian, and he returned.
Q. What do you mean by "returned?"
A. Mr. McKee, the agent, from the Quantico plantation.
Q. Then he went there for the purpose of getting a levy on it?
A. Yes, sir.
Q. He went back from there where to?
A. To hunt Linton to get his $80,000 back.
Q. Where was that $80,000 paid to Linton?
A. Somewhere in Texas. He met Mr. Henry Perkins, an uncle of Mr. Linton, and he gave him an order for four hundred bales of cotton in lieu of the $80,000.
Q. Where was that situated, the four hundred?
A. It was up in Texas. I was to seize Confederate cotton, and where they gave me documents showing it was not Confederate cotton I lost sight of it then. It was not business.
Q. Do you know what boat that cotton came on?
A. I do not. I was not with Banks' expedition. I was up the Yazoo river with Colonel Coats.

Cross-examined by Mr. McConnell:

400 Q. All you have been telling is from hearsay? You have no personal knowledge about it?
A. Well, I had documents for it.
Q. What had you the documents for?
A. The documents had been sent there to me through the secret service bureau with regard to this cotton, to look after it.
Q. You heard it come from the Quantico plantation?
A. Yes, sir.
Q. You did not know?
A. No, sir.
Q. You don't know of a bale of cotton coming from the Quantico plantation of your own knowledge?
A. No, sir; I went to Mr. Weed, demanding the cotton as being that of the Confederate Government.
Q. He was the man that told you he paid Linton $80,000?
A. No, sir; Mr. McKee, his partner; there were two McKees, one the partner of Weed and the other the agent. They were cousins.

Q. You understood also that this $80,000 was paid in Confederate money?

A. Yes, sir.

Q. It was not in greenbacks?

A. No, sir; there were no greenbacks at that time. I was in possession of facts of the cotton having been sold through capture made on the Mississippi river. I had the documents sent over to
401 me from the other side of the river.

Mr. McConnell objects to this voluntary statement of the witness on the grounds above stated.

Q. Did you ever see Mr. Linton?

A. Yes, sir.

Q. Did you see him in 1864 in this city?

A. No, sir.

Q. Where did you see him?

A. In Baton Rouge.

Q. In what year?

A. Well, it was when he was first married. I did not see him during the war at all. I formerly lived in Baton Rouge.

Q. How long were you in New Orleans in 1864?

A. I was backwards and forwards all the time, every week or ten days—backwards and forwards, travelling and going all the time. I don't know how much time I spent here in 1864. I was under orders almost all the time, and sent from one place to another by the commanding officer—almost all the time under orders.

Q. In what month was that that you went to see C. A. Weed & Co. about this cotton?

A. I don't recollect the month exactly. I think it was
402 either May or June, on the return of Banks' expedition. I don't remember the month.

Q. How long was it after the return of General Banks' expedition?

A. It was while they were returning. They had not all returned; some of them were at Morganza.

Q. Were you in the city when the fleet returned here?

A. Most of it returned when I arrived here.

Q. Where did you- business take you to, backwards and forwards, about that time?

A. From New Orleans to Natchez, Vicksburgh, and Memphis; up and down the river from place to place.

Q. Which army were you moving with at that time?

A. General Sherman's, up the Yazoo river.

Q. But at that particular time, when the fleet of General Banks arrived in this city, what commanding general were you operating under—whose service were you in?

A. I was in the 17th army corps, with headquarters at Vicksburgh. When I went up the Yazoo river General McPherson was commanding, and then General Slocomb. General Sherman was my principal officer, and my reports were made directly to him. The others were district commanding officers.

By Mr. FARRAR:

403 Q. You spoke about the way in which you had come by the information of the sale of this cotton from Mr. Linton to McKee, the Confederate agent; please detail how you came into possession of that information.

Mr. Gilmore objects on the grounds above stated.
Mr. McConnell joins in the objection.

A. A book was captured wherein the Confederate agent, Mr. Fulkinson, stated and detailed a great number of lots of Confederate cotton; and we also captured, crossing the Mississippi river over at Rodney, the mails, and I believe fourteen or fifteen United States flags that the Confederates had captured. They were sending them as trophies to Richmond.

Mr. McConnell objects on the ground that this information was disclosed from Confederate documents captured. This testimony is objected to on the ground that these documents, which the witness states gave the information, are the best evidence and should be produced.

Q. How did these documents come into your possession?

A. I was with the party at the time they captured them.
404 They were brought to Natchez and opened by General Dana and General Breyman; we had to examine them.

By Mr. MCCONNELL: These were the documents that you refer-ed to when in answer to the question I asked you, whether all your information was not hearsay, and you said, No; that you had documents. These were the documents you refer-ed to?
A. Yes, sir.

By Mr. FARRAR:

Q. Did not C. A. Weed & Co. have some documents also?
A. I stated they showed me some documents. The documents I refer-ed to, as to Weed & Co., were not what informed me. Their papers showed me it was not Confederate cotton.
Q. It satisfied you that this sale had been cancelled?
A. Yes, sir; it was no sale at all.
Q. Because delivery could not be made of it?
A. Yes, sir.

Mr. McConnell objects as leading.

405 Q. What do you say—what was the difficulty about this transaction so far as the Confederate agent was concerned?
A. I claimed that they had Confederate cotton, and they said no, they had none. They asked me what cotton I alluded to, and I said the Linton cotton from the Quantico plantation. They then told me that the cotton that Linton sold to McKee, of the Confederacy, was under mortgage and seizure and could not be delivered to Mr. McKee; consequently there was no sale.

Q. What about that sale having been set aside?

A. He showed me some papers and documents which showed me that McKee had gone back for his money and got other cotton.

Mr. McConnell objects to the above on the grounds heretofore stated.

Adjourned to further notice.

(Signed) R. C. HUTCHISON.

Sworn to and subscribed before me November 16, 1881.

F. A. WOOLFLEY, *Examiner.*

406 United States Circuit Court, Fifth Circuit, Eastern District of La.

MARIE P. EVANS and HUSBAND
vs.
DAVID URQUHART *et als.* } No. 7672.

Testimony taken on behalf of complainants under the 67th rule of practice of the courts of equity of the United States, as amended, before F. A. Woolfley, examiner, duly appointed by said court to take the depositions of witnesses in the above-entitled cause.

NEW ORLEANS, *December 13th*, 1881.

Present: E. H. Farrar and James R. Beckwith, Esqrs., for complainants; Thomas Gilmore, Esq., for Lapeyre's heirs, defendant; Horace E. Upton, Esq., representing James McConnell, Esq., during his absence, solicitor for the State National Bank.

Mr. Gilmore objects to the taking of this testimony for want of notice.

Mr. H. E. Upton, on behalf of James McConnell, Esq., rep-
407 resenting the Louisiana State Bank in this suit, and who is sole and exclusive co-nsel for that corporation in this suit, objects on his said behalf to the taking of any testimony on the following grounds:

That Mr. McConnell is now absent from the city and State on important professional business, and that he left the city under the full impression, according to his understanding with the co-nsel opposed to him, that there should be nothing done in this case during his absence, and consequently he (Mr. McConnell) gave him (Mr. Upton) no information whatever concerning the condition or character of this suit; that he (Mr. McConnell) will return to this city within the next week.

And he (Mr. Upton) further does objects on the ground that there has been no legal or sufficient notice of the taking of this testimony served upon said Louisiana State Bank or to its co-nsel.

Entry by complainants' co-nsel.—Mr. Thomas Gilmore, attorney-at-law, and Mr. H. E. Upton, attorney-at-law, and Mr. Samuel H. Kennedy, president of the State National Bank, are present
408 before the examiner at the time when the above objections are made; that there was no understanding or agreement what-

ever between Mr. McConnell and Mr. Farrar or Mr. Beckwith that this matter should be delayed one day or anything done during his absence.

Mr. Gilmore state- that he is here for the purpose of objecting and protesting to the taking of this testimony, Mr. Upton joining in the above statement.

THOMAS KERGAN, a witness produced, sworn, and examined on behalf of complainants, says:

By Mr. FARRAR:

Q. How old are you?

A. About sixty-three years.

Q. What is the condition of your health at present—is it good or bad?

A. My health is very good, but I am weak from being sick a long length of time, being confined to my room about three months; but my general health is good.

Q. Where do you reside?

A. In the parish of Rapides, thirty miles west of Alexandria.

409 Q. Are you at present permanently in the city of New Orleans or temporilly?

A. Temporrilly.

Q. How long have you lived in the parish of Rapides?

A. Since about 1855; perhaps a little before or after.

Q. Where you there all during the war?

A. Yes, sir; up until the last raid that was made by the Federal forces.

Q. Where did you go then?

A. I went to Scotland.

Q. You went back to Scotland?

A. Yes, sir.

Q. Are you a native of Scotland?

A. Yes, sir.

Q. Where were you living during the war?

A. I was conductor of the Alexandria and Red River railroad up to and during the war—until the last raid was made.

Q. Were you there until the raid was made last?

A. Yes, sir.

Q. You came away when?

A. With the fleet.

Q. Do you know J. Madison Wells?

A. Yes, sir.

Q. Did you know him at that time?

A. Yes, sir.

Q. Do you know the Quantico plantation and where it is?

A. Yes, sir.

410 Q. State whether you have any knowledge of any cotton being brought to Alexandria from the Quantico plantation by J. Madison Wells at any time during the war on that railroad;

if so, state when, and state the circumstances, and how you came to know it, and all about it.

A. In the spring of 1864 I was conductor of the railroad, in the employ of R. S. Smith, and Governor Wells came to me and said to me, "Thomas, I have chartered the railroad for six months."

Mr. Gilmore objects to all between J. Madison Wells and the witness on the ground that the same are hearsay and out of the presence of the parties and between persons who were not sworn.

WITNESS: He said, "I wish you to continue; I have got a lot of cotton at my place, the Quantico plantation, which I wish you to bring to Alexandria for me." I remembered that I was very glad he chartered the road, as I could get clear of it, as my health was bad, and he said to me he would give me one hundred dollars a month as a bonus, besides what my employees paid me as a
411 salary. I finally concluded to stay on, and went to work, bringing in his cotton. His first request to me was *was* first to bring in his cotton and then his sugar.

Q. Have you any idea, or can you state how much cotton was brought on that road from the Quantico plantation by J. Madison Wells?

A. It is so long ago that I cannot state exactly how much, but quite a large amount of cotton was brought in. But he had purchased cotton from several parties—from myself fourty-six bales, and from Mr. Neill, and from A, B, and C promiscously—I cannot say how much. Then Mr. Terrill Bourges had about two hundred bales, more or less, and Mr. Matt. Stafford had about two hundred bales, more or less. I would say that I took from the two platforms, but cannot give it accurately, say twelve, fifteen, or eighteen hundred bales.

Q. Can you tell how much you took from the Quantico plantation?

A. No, sir; all my business was to take off the freight of the road and deliver it to either end, and my part was done. I never charged my memory with anything about the delivery of it.

Q. Do you know whether there was any cotton brought
412 from the Quantico plantation that belonged to Wells?

A. Yes, sir.

Q. Do you know whether there was a large or small quantity?

A. A large quantity.

Q. As much as five hundred bales?

Mr. Gilmore and Mr. Upton object to the above as leading.

Q. Give us an idea.

A. I will give you the best I know how. To the best of my knowledge, I will state twelve, fifteen, or eighteen hundred bales. He purchased promiscuously around from different parties. He purchased from myself fourty-six bales, and I think the cotton that he purchased from the other parties went with his own. I am not positive, but I believe such to be the case.

Q. But I want you to put an estimate, if possible, upon the amount

of cotton brought by Governor Wells from the Quantico plantation, irrespective of the amount he brought. How much of that eighteen hundred bales was brought from Quantico plantation?

A. It is impossible for me to do it, as I was not known to
413 any of the sellers, only the sale that I made to him myself.

Q. Can you not state whether there was one, two, three, four, five, six, seven, eight, nine, or ten hundred bales brought from the Quantico plantation?

Mr. Gilmore and Mr. Upton objects to this form of examination, as it is leading.

A. I have stated twelve, fifteen, or eighteen hundred bales; there might be more.

Q. Do you mean brought from the Quantico plantation?

A. From the Quantico plantation and the platform below; from the two platforms.

Q. From the Quantico platform and from the platform below?

A. Yes, sir.

Q. Which platform did you take the largest amount from?

A. From the platform below. I judge that was on account of the road or hauling the cotton to where the platform should be. I judge it was on that account; but I had nothing further to do with it. I never charged my memory with it. I thought it was just for the time. I never dreamed of any future seeing to it, and from
414 that fact I cannot remember anything more accurate than I now state.

Q. How was that cotton marked?

A. I don't remember that, either.

Q. Do you remember the marks of an- of it?

A. No, sir; I do not. It is so long ago I cannot remember it. I did know once, but I have now forgotten.

Q. Was there any of it marked with a "Q.?"

Mr. Gilmore and Mr. Upton object to the question as leading.

A. I cannot say.

Q. Where were these two platforms that you speak of? Describe their position and locality in relation to the Quantico plantation.

A. I cannot say how far apart now; some ten or fifteen acres apart—perhaps not quite so much.

Q. Where they both on the Quantico place?

Mr. Gilmore and Mr. Upton object as leading.

A. I cannot say positively as to that from the fact that I don't know where the lines were.

By Mr. BECKWITH:

Q. Your duty on the road was to see that the cotton was
415 taken up on the cars, checked on, and delivered off?

A. Yes, sir.

Q. How many trains were there on the road?

A. There were two when it was a pressing time.

Q. Do you remember whether during any of this time you speak of there were two trains running?

A. Yes, sir. On one occasion—I remember it particularly—I run both trains one day. I remember it particularly from the fact that one of them caught fire opposite General Bailey's plantation, and I had to roll off ten or fifteen bales. I don't know exactly.

Q. When you were running two trains did you have two conductors?

A. No, sir; I managed the whole road myself. The whole control was given up to me between the two warehouses.

Q. You superintended their loading?

A. Yes, sir; I would load one and send it by the engineer to town. The men would switch off and allow one lot to go ahead afterwards and meet him, then come back, and so on.

Q. Do you remember how the trains were made up? What did they consist of, an engine and how many cars?

416 A. Generally five.

Q. How were they arranged—before or after the locomotive?

A. Three before and two behind.

Q. You pushed three and pulled two?

A. Yes, sir; when loaded with cotton we pushed three.

Q. Which did you load the cotton on—those in front or those behind?

A. Yes, sir; to prevent it catching fire.

Q. Did you load it in front or at the back?

A. In front.

Q. Do you remember what sort of cars they were?

A. They were flat burden cars.

Q. Were they like the flat open cars that you ordinarily see on railroads?

A. Yes, sir; only more plainer.

Q. How as to size were they?

A. They would carry about thirty barrels molasses; you can judge from that.

Q. Do you remember how many bales of cotton could be put on them?

A. You could put fourty on them.

Q. On a car?

A. Yes, sir.

Q. Do you remember whether the cars on the road would sustain a train of three cars loaded with cotton? Was the road

417 strong enough on the bridges?

A. Yes, sir.

Q. Do you remember whether these cars were sent on a full load or not?

A. They were never fully loaded with cotton. We never loaded cotton on the cars behind.

Q. But the three cars forward?

A. They were loaded one day I remember in particular; every time in front.

Q. How many times did you run trains over that road a day?

A. On this day I ran twice, making two loads, with one hundred and eighty bales to each train.

Q. Do you remember about the length of time that it was between the time you first began to haul cotton from the Quantico plantation and the time when Banks' army left?

A. I don't remember the time or the length of time.

Q. Can you approximate and say within one, two, or three months?

A. I cannot. I commenced before the battle of Mansfield to bring it in, just before it, as well as I can recollect.

Q. It seems to be the impression of these protestors present that you have not stated that you took any cotton from the platform on the Quantico plantation.

418 A. Yes, sir; I took a great deal of it, a large amount of it, but I cannot say how much exactly.

Q. Do you remember ever having been on the platform of the Quantico plantation at any time during that time?

A. You mean to say did I ever visit the Quantico?

Q. Yes.

A. Yes, sir; I was well acquainted with the manager of the place. I visited him frequently.

Q. Did you get the man's name?

A. Anold Gains. He was manager of the place.

Q. Did you see when you were on the place any cotton?

A. Yes, sir.

Q. In what shape was it when you saw it?

A. When I last saw it the cotton-house was destroyed by fire.

Q. But when you first saw it?

A. When I first saw it everything was in good order.

Q. But if the cotton was there where was it?

A. It was in the gin-house and in the outhouse.

Q. Was it in the seed or in bales?

A. There was a little baled, but I cannot say how much.

419 Q. Do you know whether there was any burning of cotton during the time that intervened between the time you first commenced to haul that cotton and the time you stopped hauling it?

A. I think I took away some cotton before it was burned.

Q. Will you tell me what you know about the burning of any cotton?

A. I think the cotton, as far as I know—it is only hearsay to me—that it was burned by Captain Jeff. Stafford's Co.

Mr. Gilmore and Mr. Upton objects to the above as hearsay.

Q. Did you see Stafford?

A. Yes, sir; he called to my house on his way up and asked me if there were any Federal forces in the neighborhood, and I told him there were not, and soon after I saw the gin-house on fire.

Q. Did you go on the plantation after that?

A. Yes, sir.

Q. What evidence of burning did you see there?

A. I saw the gin-house was burned. That is all I did see differ-

ent from what I saw before. If there was anything further I did not see it, or if I did I don't recollect.

420 Q. Did you haul cotton from there after the gin-house was burned?

A. Yes, sir.

Q. Do you remember whether you hauled more cotton from there before the burning of the gin-house than you did afterwards?

A. It is so long ago I do not remember whether I did or not.

Q. Do you remember whether you hauled any considerable quantity afterwards?

A. Yes, sir; I hauled right smart afterwards, but I cannot say how much.

Q. Do you know what was done to replace the burned gin, if anything?

A. I do not. I don't think I ever visited the place after the time I went there and saw it burned.

Q. That is, you never went up to it?

A. I never went up again. I think I only went one time after the fire.

Q. That is to say, you mean you never run the cars?

A. No, sir; I mean to say I never went to the plantation.

Q. You never went from the platform?

—. No, sir; I did not. My business was on the road entirely. It was only on Sunday I had a chance to go anywhere except on the road.

Q. Can you reccollect how long it was after the gin-house was burned before you got done hauling cotton over the road and left?

421 —. No, sir; I have no idea of the time, only this, that I kept hauling the cotton as fast as they ginned it up until the time that the fleet left Alexandria, but they had not cotton for me all the time, only I waited for them to gin it. I would drop a car or two there and then bring them back to Alexandria, bringing such cotton as belonged to A, B, and C, and sugar and molasses. I would leave these cars in front there and take them on again.

Q. These cars you left at the Quantico plantation?

A. Yes, sir; when the cotton was there.

Q. I now refer to that.

A. Yes, sir.

Q. Then when you took them up you took them from the Quantico plantation and ran them in to Alexandria?

A. Yes, sir.

Q. Do you remember whether you left Alexandria the day that General Banks' troops evacuated or before?

A. I left with the fleet and came down with them.

Q. By the fleet do you mean the armed vessels or transports?

A. They were all moving off together.

Q. Do you remember on what boat you came down on?

422 A. I do not, but I came on the one Governor Wells was on, whatever one that was.

Q. Did you come all the way down on the same vessel with Governor Wells?

A. Yes, sir.

Q. Did you come directly down.

A. No, sir; they did not come directly down. They had to halt several times on the way. There was some little skirmishing going on coming down the river. I think it was Simmsport where they formed a bridge across the bow of the fleet to pass the army over, and from there we moved down to the city without stopping.

Q. Did the flotilla of vessels come pretty close together coming down from the mouth of Red River?

A. Yes, sir; as far as I could see.

Q. Was there any considerable number of these transports laden with cotton?

A. I don't remember any cotton being on any one of them, only that I did notice two or three pilot-houses with cotton placed around them, to protect the pilot, I suppose.

Q. Was there any cotton on the vessel you came down on?

A. Not that I remember of.

Q. Was it a transport or gunboat?

A. It was a transport.

423 Cross-examined by Mr. GILMORE:

Q. What is the length of the railroad from Alexandria?

A. The entire length?

Q. Yes.

A. It is, to the best of my knowledge, sixteen miles, but by the public road it is twenty-one. The railroad is sixteen miles.

Q. It ran from Alexandria to what point?

A. To what is called La Conti.

Q. How many platforms were on the road?

A. Really I am not able to say how many, but I will tell you, about. (Note.—Reflecting and counting.) Say ten or twelve platforms, about, from one end of the road to the other.

Q. Were you running from the end of the road at Alexandria to the other end of the road?

A. Yes, sir.

Q. Were you bringing cotton from the other end of the road to Alexandria?

A. Yes, sir.

Q. You were bringing all the cotton that was on the platform or laid at the platform for Alexandria?

A. Yes, sir.

Q. Where did the cotton come from that came to the platforms?

A. That I cannot say.

Q. Your business was on the road, and you don't know where the cotton came from?

424 A. No, sir; my duty was to take all the freight of the road that was to be put on, to deliver it at whichever end it belonged to. If to Alexandria I delivered it; if at the other end I delivered it.

Q. The country people brought in cotton on wagons and left it at the platform of the railroad company to take it?

A. Yes, sir.

Q. So it took cotton from each end of the railroad?

A. I don't know. After Governor Wells took charge of the road the road was devoted particularly *for* his benefit.

Q. Was he buying of cotton largely at that time?

A. He bought pretty smart, but I cannot say how much. But I do know that he purchased from a few of the neighbors promiscuously, but to what amount I don't know.

Q. It was understood he was buying cotton all about?

A. Yes, sir; he purchased from myself fourty-six bales.

Q. You don't know what became of the cotton after it got in Alexandria?

A. I do not. My mind and attention was devoted entirely to the road.

425 Q. You don't know where the cotton came from that was taken up at the platform of the Quantico plantation—you don't know where it came from?

A. Where it came from?

Q. Yes; you say there was a platform on the Quantico plantation?

A. Yes, sir.

Q. Do you know where the cotton came from that was there—if any was taken up?

A. From the Quantico plantation.

Q. But were — not other plantations in the neighborhood that delivered cotton?

A. Yes, sir; but the bayou seperates the plantations there. There is no bridge and there is no way for them bringing cotton. It is bound to be from the Quantico plantation.

Q. There is no public road?

A. No, sir; only the plantation (road) turning now.

Q. Is there not a country road running to the right of that plantation?

—. Well, it is not near the plantation. That road there is only a turn road.

Q. But cotton could be brought from the other road and delivered at that platform?

A. I suppose it could.

Q. Between the Quantico plantation and Alexandria what platforms were there?

A. Well, I don't know; some four or five.

426 Q. Was the gin-house on the Quantico plantation burned before the arrival of General Banks' forces? I think you said the Confederates burned it.

A. I thought they were somewhere in the neighborhood of Alexandria or perhaps about Bayou Rapides.

Q. How far is that from Alexandria?

A. The mouth of it is immediately at head of the village of Alex-

andria, or town, whatever you may call it; immediately at the upper quarter.

Q. Was the army on its way up?

A. Yes, sir.

Q. Was he there about Bayou Rapides at the time the gin-house on the Quantico plantation was burned?

A. I believe heim to be about there. I am not right positive about that.

Q. I suppose when that army appeared at Alexandria the Confederates fell back?

A. I don't know. I was busy on the railroad. I had no chance of pointing out anything at all. I was about the house, and the house and the road, and confined to it.

Q. How often where you on the Quantico plantation?

A. Off and on; a great many times.

Q. Well, but within this period of time.

A. I don't recollect after that more than once, after the gin-house was burned.

427 Q. You saw no cotten there then?

A. Yes, sir; I did. I saw cotton in some outhouses.

Q. Bailed or not bailed?

A. I am not able to say whether they were in bales or not; but I know there was a great deal in seed in the house that I saw, promiscuouly bought, about.

Q. What became of that?

A. I don't know.

Q. Do you know Jehu or Henry Perkins?

A. I do not. I would not know them if I saw them. I have heard of them.

Q. Were they there, to your knowledge?

A. I am not able to say. Being confined to the road, I never had a chance to see them.

Q. You came down to town on the same boat with Governor Wells?

A. Yes, sir; I came to get the money for cotton. He did not have money, and he told me to come to New Orleans and he would give me a check for the money, which he did.

Q. Was not a great deal of sugar and molasses brought into Alexandria about the same time that the cotton was brought down?

A. There was some; I don't recollect how much, it is so long ago. It is a hard matter for me to remember.

428 Q. You got paid for your cotton from Wells?

A. Yes, sir; he paid me $150 a bale.

Q. Where did you go then?

A. To Scotland—from here to New York and from New York to Liverpool.

Q. What part of Scotland did you go to?

A. To Kinkenbridgeshire, the south of Scotland. It is on the seacoast or is an inland harbor.

Q. When did you come back?

A. I came back in the fall of the same year; I believe in 1864.

Q. When did you return to Alexandria?
A. On or about the first of April, 1865.
Q. About 1865?
A. On or about the first of April, 1865.
Q. Was it after the close of the war?
A. The war was not quite then ended.
Q. You have been living there ever since?
A. Yes, sir.
Q. What is your business—a farmer?
A. Yes, sir.
Q. Do you come to New Orleans pretty often?
A. No, sir; I believe it was five years since I was here before.
Q. When will you be down again?
A. I am not able to say.
Q. How do you happen to be down at this time?
A. I was called down as a witness.
Q. You were sent for as a witness in this case?
A. Yes, sir.
429 Q. Were you written to—have you got a summons or letter?
A. I came after I was written to also.
Q. Who went after you? Produce the letter that you got.
A. Mr. Sam. Fellows came after me.
Q. He wrote you a letter?
A. He came after me.
Q. Did you not receive a letter also?
A. Yes, sir.
Q. Will you be so good as to produce the letter?
A. I have not got it.
Q. Will you send it down?
A. I could do it.

Mr. Gilmore calls for the production of the letter, and Mr. Farrar instructs the witness to produce it.

WITNESS: There is nothing of any importance in it.

Q. How long do you expect to remain here?
A. I shall leave as soon as you gentlemen are kind enough to set me free.

(Signed) THOMAS KERGAN.

Sworn and subscribed before me December 13, 1881.

F. A. WOOLFLEY, *Examiner.*

Letter never produced.

W.

Adjourned subject to notice.

430 United States Circuit Court, Fifth Circuit, Eastern District La.

MARIE P. EVANS and HUSBAND
vs.
DAVID URGUHART *et als.* } 7672.

Testimony taken on behalf of complainants, under the 67 rule as amended of the courts of equity of the United States, before F. A. Woolfley, special examiner, duly appointed by said court to — the depositions of witnesses in the above-entitled cause.

NEW ORLEANS, *Dec. 24th*, 1881.

Present: James R. Beckwith, Esq., for the complainants; Thomas Gilmore, Esq., for the Lapeyer's heirs, defendants; Horace E. Upton, Esq., appearing on behalf of James McConnell, Esq., for the State National Bank, absent.

Also present: Samuel H. Kennedy, president of the State National bank.

Mr. Upton, on behalf of Mr. James McConnell, who is the sole and exclusive co-nsel of record for the State National Bank and who — absent from this city on important professional business of a
481 public nature, states that, according to Mr. McConnell'- statement to him before leaving the city and in accordance with his understanding with co-nsel opposed to him or one of them, Mr. Farrar, there was *was* to be no testimony taken in this cause during his absence; that he (Mr. Upton) *being* left here to look after Mr. McConnell'- general business, and that from the voluminous pleadings and record in this case he cannot fairly be expected to represent Mr. McConnell in a controversy of this character, having no knowledge whatever of the character of this suit.

He further objects on the ground that there has been no legal or sufficient notice served upon Mr. McConnell as the co-nsel of record; that under the rules by which this testimony is taken he is entitled as the co-nsel of record to notice and such notice and reasonable time as the examiner may fix, and that, in his judgement, no legal notice or reasonable time has been given, and that therefore the examiner should not proceed with the taking of this testimony at this time.

He therefore called Mr. Farrar, of co-nsel, as a witness to prove the nature of Mr. McConnell's absence.

482 E. H. FARRAR, Esqr., being sworn, says:

By Mr. UPTON:

Q. Do you know the nature and character of the business that suddenly and unexpectedly occasioned the absence of Mr. James McConnell, as the sole and exclusive co-nsel of record in this case, representing the State National Bank?

A. With reference to the many matters implied and stated in your question I have no knowledge, but with reference to the char-

acter of the business which called Mr. James McConnell away from this city, and at the present time, I am fully acquainted.

Q. What is the character of the business?

A. I don't know that I am at liberty to state, but I will state this: it is a matter which appertains to the welfare and benefit of the educable children of the city of New Orleans for probably many generations to come.

Q. Then, as I understand your response, it is a business of an important and public nature?

A. I so consider it.

At this stage the examination of the witness, John Clements, was continued until Monday, December 26, 1881, at 11 o'clock a. m.

482½ MARIE P. EVANS and HUSBAND *vs.* DAVID URGUHART *et als.* } No. 7672.

NEW ORLEANS, *December* 26, 1881.

Testimony on behalf of complainants resumed this day, as per adjournment.

Present: James R. Beckwith, Esq., for complainants; Thomas Gilmore, Esq., for Lapeyre's heirs, defendants, and H. E. Upton, Esq., representing James McConnell, Esq., solicitor for the State National Bank, defendants, and Samuel H. Kennedy, president of the State National Bank.

JOHN CLEMENTS, a witness produced, sworn, and examined on behalf of defendants, deposes and says:

By Mr. BECKWITH:

Before proceeding further with the examination in the absence of Mr. McConnell, solicitor for the Louisiana State Bank, Mr. Upton here renews the objections to going on with the examination until
483 Mr. McConnell can be present, and he reiterates that on account of the voluminous record he cannot fairly be expected to understand its nature and character.

Mr. Gilmore also joins in the objection.

Examination of the witness proceeds:

Q. State your full name.

A. John Clements.

Q. What is your age?

A. My age will be sixty-three next April.

Q. How long have you resided in the parish of Rapides, State of Louisiana?

A. Forty-one years.

Q. What part of the parish of Rapides have you resided in most of that time?

A. In Alexandria.

Q. Have you at any time held any office or offices in Rapides parish?

A. Yes, sir.
Q. What office?
A. I was city marshal, I was deputy sheriff, I was sheriff, I was tax collector, I was parish judge. I believe that comprises nearly all.
Q. Where were you between the period of time included in the years from 1862 to 1864?
A. I was in Alexandria.
484 Q. Did you during any period of that time hold the office of sheriff or deputy sheriff?
A. I was deputy sheriff.
Q. Who was the sheriff under whom you was deputy?
A. Mr. J. Neal.
Q. How long were you deputy under Neal?
A. I was deputy under him until there were no more courts or sheriffs or deputies there. I was there until after the raid in 1864, which closed the courts and closed all kind of business up there.
Q. About what time, do you remember, were you first appointed the deputy of Neal?
A. I was appointed in 1862.
Q. You continued to act as deputy, then, up until the time of the last raid in 1864?
A. Yes, sir—that is, after the raid of 1863. There was not very much done, but still I held the position.
Q. There were two raids of the Federal forces during the war?
A. Yes, sir.
Q. When did the first one take place?
A. In 1863.
Q. And the second one?
A. And they continued up there ten days.
485 Q. That was the first time?
A. Yes, sir.
Q. Now, the second raid was when?
A. The second raid was in 1864.
Q. That was what is known as Banks' Red River expedition?
A. Yes, sir.
Q. Do you know anything of the plantation, at one time owned by Stephen Duncan Linton, commonly called the Quantico plantation?
A. Yes, sir; I am acquainted with it.
Q. That is in the parish of Rapides?
A. Yes, sir.
Q. Did you ever have or hold in your hands any process of any kind for the seizure of that place?
Ans. No, sir; but I held in my hand a process for the seizure of the cotton that was made on the place.

Mr. Upton objects to any testimony with reference to any judicial process, and calls for the records of the court.

Q. Do you remember whether you had more than one?
A. I had two at the same time.

Q. Do you remember who the plaintiffs in the writ were?

A. One was Mr. Urquhart and the other, I think, was the *was the* Louisiana State Bank, if I am not mistaken. I am not positive, but the bank was one and the other was David Urquhart *versus*

486 S. D. Linton.

Q. Do you remember by whom these two writs were placed in your hands?

A. There were placed in my hands by the then clerk of this court.

Q. What was his name?

A. I cannot say, but I think Kilpatrick.

Q. Was he clerk of the district court of the parish of Rapides?

A. Yes, sir.

Q. Do you remember whether any attorney or other person gave you any direction as to the execution of these writs?

A. When the clerk produced these writs in my hands he told me to call on Mr. Elgee.

Mr. Gilmore objects to the conversation, whatever it was.

Q. This Mr. Elgee is John K. Elgee?

A. Yes, sir.

Q. Who was he?

A. He represented the plaintiffs in these two suits.

Q. But who was he?

A. He was an attorney and counsellor-at-law.

Q. Where did he reside?

A. In Alexandria.

Q. Did you take any directions from him with regard to the writs?

A. I did.

Q. What were these directions?

487 A. He directed me to go down and seize all the cotton there was on the Quantico plantation, and to appoint Major Wells the custodian, and he gave me a letter to Wells.

Q. Who is this Major Wells; do you remember his name?

A. Yes, sir; it is James Madison Wells; afterwards Governor Wells.

Q. Did you execute that writ as directed?

A. I did.

Q. You seized and took the cotton?

A. I seized all the cotton ginned and unginned, baled and unbaled, that was on the Quantico place.

Q. What did you do with this letter that Elgee gave you to Wells?

A. I carried it to Mr. Wells and gave him the notice of his appointment.

Q. Did you deliver the letter to Mr. Wells?

A. I did.

Q. Was the notice of his appointment in writing?

A. Yes, sir.

Q. You remember when that was; what time?

A. I think it was after the first raid; immediately after the first raid, as well as I can recollect.

Q. Was it before or after the last raid?

488 A. It was before. It was in 1863. The last raid was in 1864.

Q. This levy took place between the two raids; you are certain of that?

A. Yes, sir.

Q. Will you state, as well as you can remember, what occurred between you and Wells at the time you went and made that seizure and appointed him keeper?

A. He told me that was all right.

Mr. Gilmore objects on the ground that the conversations between Wells and the witness are no evidence against the defendants.

Q. Where did you find Wells?

A. I found him at his house, about half a mile or a little over from the *the* Quantico plantation gin. He live- at the adjoining place.

Q. Did he accept the keepership?

A. Yes, sir.

Q. Why did you appoint Mr. Wells keeper there; what led to it?

A. The sheriff had left and placed the office in my charge, and left everything in my charge belonging to the office. He put out with the Confederate army when the raid came up. I was still in full charge of the office, and I did not like the responsibility

489 of making his sureties liable. The country was in such a condition that I was afraid to take charge of so much property for fear that the sheriff's bondsmen should be made liable for any failure to keep it. I would not have seized it at all only for Mr. Elgee, for he said he would be responsible for the keepership and would not hold the sheriff liable.

Mr. Gilmore objects on the ground that the statements made are not the best evidence.

Q. I understand you to say, then, that you went to Elgee, the attorney of the plaintiff in the writs, and made these objections to him?

A. Yes, sir; that is the truth.

Q. Will you tell us, as near as you can remember, what you said at your interview to Elgee and what Elgee said to you?

Mr. Gilmore objects on the ground that conversations between Elgee and the witness is not evidence.

A. I told Mr. Elgee what I have related here; that I did not like the responsibility, making the seizure, and Elgee told me

490 that he would give me a letter to Mayor Wells, and that he would not hold the sheriff liable, and under these circumstances I made the seizure.

Q. After the appointment of Wells was he in custody of the cotton on that plantation?

A. Yes, sir; I think he was already in full charge of the plantation.

Q. While you remained sheriff or deputy sheriff in charge did you disturb or remove him from the possession of that cotton?

A. No, sir.

Q. You went to the plantation with the writ, did you?

A. Yes, sir.

Q. What did you find on the plantation in the way of cotton?

A. I found a large lot of cotton in seed, or more in lint, and more in bales. I should say there was a large quantity; and in order to ascertain as near as possible what was there I went to the overseer who make- the crops—his name is Asman Gains—and I asked him how much cotton was there. It was in the cabins, in the houses and gins, and under the gallery.

Conversation- between Gains and the witness are objected to on grounds to be stated hereafter.

491 WITNESS: I asked Gains how much cotton he thought was there, and he told me there were two crops, and, if I recollect right, a part of a third one, and that to the best of his knowledge there were about from sixteen to eighteen hundred bales on the place. I gave the notice of seizure to a man called Morrice Johnson. I do not know his first name. He was a stranger to me, but he was in charge of the place. I gave him the notice of seizure of the sixteen or eighteen hundred bales, more or less. I cannot say, but I reckoned a few more or less in it, because I was not certain of the amount that was in it.

Q. Do you know what became of these lints?

A. They were in the office in 1864 when the Federals came there.

Q. That is, in the sheriff's office?

A. Yes, sir; in the sheriff's office.

Q. Did the Federal troops take possession of the court-house and sheriff'- office?

A. Yes, sir; they ordered me to give up the keys, and I gave it to the provost marshal. All the clerk's papers had been packed into the sheriff's office, as well as the sheriff's papers. The court-house afterwards was burned, and these papers were either destroyed
492 by fire or else taken out of there by the Federals before the fire came. I don't know what papers they took out.

Q. Do you know whether, when the Federals came there in 1864, you were dispos-ed of your office by them—the army driving you out?

A. Yes, sir; they took the keys.

Mr. Gilmore objects to the question as leading.

WITNESS: I have stated that they ordered the keys away from me.

Q. Did you have *entree* or possession of the office after they took the keys away from you?

A. No, sir.

Q. About how long after they took the keys away from you was it before the court-house was burned?

A. I suppose it was about a month. I don't know exactly the

length of time. It was a few days after they came they took the keys from me.

Q. How long before they left was the building burned?

A. It was burned on the very day they did leave.

Q. Did you remain in Alexandria after the Federal forces left there in 1864?

A. Yes, sir.

493 Q. Was the distruction of the court-house complete?

A. It was complete—that is, the walls were standing, but all the inside was burned up and the roof off, and a portion of the walls fell down.

Q. The office you occupied went to general distruction?

A. Yes, sir.

Q. Did you ever know anything of, or did you see any of, the records left there at the time you gave up the keys to the Federals?

A. No, sir.

Q. Do you know whether the clerk's record of the district court were found again?

A. No, sir.

Q. Where was the clerk's office proper of the district court of the parish of Rapides?

A. It was in the court-house, in the main building.

Q. That, I suppose, was destroyed also?

A. Yes, sir. It was on the opposite side of the passage.

Q. Have you in your possession or do you know whether there is in existance any copies of the two writs upon which you seized the cotton?

A. I do not. I never saw them after the court-house was burned.

494 Q. Do you remember what kind of writs they were—whether they were attachments or seizure and sale?

A. As well as I can recollect they were executions—that is, under judgements, if I am not mistaken. I cannot recollect now, it is so long ago, but it is my impression they were under judgement.

Q. Do you recollect out of what courts they came?

A. I do not. I suppose they came out of the court there at Rapides.

Mr. Upton objects to the suppositions of the witness. He must state facts.

Q. You remember by whom they were delivered to you—what officer?

A. The clerk of the court of Rapides parish.

Q. Tell us where the office of the *of the* recorder of conveyances and mortgages was.

A. In the same building.

Q. That was destroyed also?

A. Yes, sir.

Q. Did you ever have any conversation with John K. Elgee about these writs after the one that proceeded your seizure?

A. No, sir.

495 Q. Did he ever give you any further directions about them?
A. He did not.
Q. Was there any sale made under these writs while you had them?
A. No, sir.
Q. While on the Quantico plantation executing these writs, what did you see in the way of cotton? Describe it as well as you can.
A. There was a large gin-house which was partly full of seed cotton and partly full of lint, and some bales under the shed. There were several cabins. I cannot recollect now how many that were full of seed cotton. Under the gallery of the overseer house there was a quantity of baled cotton, and there were some pens also that were full of seed cotton. In fact it was stuffed almost in every space that was empty.
Q. This man Johnson that you speak of—do you know whether or not he was any relation to Governor Wells?
A. No, sir; I do not.
Q. Or whether he was in his employ?
A. I don't know. I was not really acquainted with the man when I went up there.
496 Q. The records of the district court of the parish of Rapides and the records of conveyance and mortgages for that parish existing at the time of the destruction of the court-house, in 1864—have they been considered since then as lost and distroyed records?
A. Yes, sir; there was some few men that had certified copies of their property.
Q. Do you know or have you heard of any of the original papers or records having turned up since?
A. No, sir; never.
Q. Do you know what became, of your own knowledge, of this cotton on the Quantico plantation?
A. I do not.

Cross-examined by Mr. GILMORE:

Q. In what year did you make this seizure?
A. In 1863.
Q. What time of the year?
A. I think it was about—I cannot say exactly, but I think it was about August. It was after the raid. I think the raid came then through to Alexandria about the 17th or 18th of March.
Q. How did that raid reach Alexandria?
A. By the river.
Q. You speak of the one in 1864?
497 A. Yes, sir.
Q. And the other one by land?
A. Yes, sir.
Q. And there was a junction of forces in Alexandria?
A. Yes, sir.
Q. The troops took possession of Alexandria?
A. Well, they occupied it. I don't know about taking possession of it exactly. The people that lived there stayed around.

Q. That was merely a possession?
A. Yes, sir; they had charge of it and done as they pleased.
Q. Did they take possession of the court-house?
A. No, sir; they kept their office there, but they did not destroy the papers; they did not take full possession.
Q. Did they take possession of the court-house?
A. Yes, sir; they were in the court-house.
Q. What became of the judge, clerk, and sheriff when they were in possession of the court-house?
A. They remained in Alexandria.
Q. Who was the judge of the district court there?
A. I cannot remember.
Q. Who was the judge of the parish?
A. We had none.
Q. Who was the clerk of the district court?
A. R. N. Kilpatrick.
498 Q. When did Elgee leave Alexandria?
A. He left in fall of 1863.
Q. You say you cannot remember what bank it was that made the seizure that you speak of?
A. No, sir; I cannot exactly say which bank?
Q. You know that one of the writs was Urquhart's?
A. Yes, sir.
Q. Were you aware of the fact that a previous seizure had been made?
A. I was not?
Q. Do you remember what courts these writs were in?
A. I do not; I believe they came from the court at Rapides, but I am not positive.
Q. General Banks second raid was when?
A. In 1864; and he left about the 10th of May.
Q. And you remained there?
A. Yes, sir.
Q. You remained there from that time to this?
Ans. Yes, sir.
Q. You never quit the parish?
A. No, sir.
Q. During what time *where* you judge of the court?
A. From 1877 to 1878.
Q. That was recently?
A. Yes, sir.
Q. What office did you hold during the Federal occupation in 1864?
A. I had just been turned out of sheriff's office.
499 Q. What became of the officers in 1864—the judge, clerk, and sheriff?
A. I don't recollect about the judge. The others—Rhorer, the recorder—left.
Q. Did you make any return on the writs of seizure?
A. No, sir; I held the writs in the office, but made no further returns.

Q. You say you delivered the key to the provost marshal?
A. Yes, sir.
Q. You done that yourself?
A. Yes, sir.
Q. Did you save anything from those records or papers?
A. Nothing. I was taken unawares about it. Why, they called for the key. I did not take any papers out of the office.
Q. How came it that the clerk's records and the sheriff's were in the same room, mixed?
A. The clerk carried them over there. It was a smaller place, and he did not want to have them scattered over.
Q. The sheriff's office was a smaller office?
A. Yes, sir; and he carried them over and put them in mine and locked the door.
Q. What is your present business?
A. I am not doing anything.
Q. You are still living at Alexandria?
A. Yes, sir; I live from my rents of property.
Q. Were you acquainted with S. D. Linton?

Answer. Yes, sir.

500 Q. Were you acquainted with his father-in-law, Jehu Perkins?
A. No, sir.
Q. Were you acquainted with Dr. Henry Perkins?
A. No, sir.
Q. Did you see Linton during the war on his plantation, in Alexandria?
A. I did not.
Q. Did you see Mrs. Linton, Mrs. Evans?
A. No, sir.
Q. Did you see her farther, Dr. Jehu Perkins?
A. No, sir.
Q. How often had you been on the Quantico plantation?
A. While I was sheriff I passed it frequently. It was on the public road.
Q. And not on the railroad?
A. No, sir; I don't know if the railroad may touch it at one point, one or two miles.
Q. It is accessible by the country roads in all directions?
A. Yes, sir; it is on the big public road to Cheneyville.
Q. You are not sure whether the railroad touches it or not?
A. It may touch it; but it is a long ways off.
Q. The road runs round it?
A. No, sir; the public road runs through it.
Q. What is the nearest platform or station to the Quantico plantation?

A. I cannot exactly state which is the nearest one—that is,
501 the one back of Mayor Wells or the one that is at Chambers. Chambers joins on to it; but it seems to me that the one at Chambers should be more accessible from the plantation to that part of it.

Q. What became of the negroes on the Quantico plantation?

A. I think most of them left in 1863. I think they went down about Berwick's Bay.

Q. They left the place?

A. Yes, sir.

Q. Have you not reason to know they were taken to Texas by Dr. Perkins?

A. No, sir. I have not.

Q. Was it not a matter of common notoriety in Alexandria?

A. No, sir; not that I recollect it. I may have heard it at that time. I would like to remember these things, but they are so long past I cannot.

Q. Did you take your report of the quantity of cotton on the Quantico plantation from Johnson?

A. No, sir. Johnson was a man that had not been there very long. I was not acquainted with him. I expected to find Mr. Gaines, and I went and saw him.

Q. Where was he?

A. At Mr. Reeves' place.

Q. Did you take your information from Gaines?

502 A. Yes, sir. He was the one that made the crops; he was the overseer; that I found — from Johnson. I asked Johnson; he could not tell me about the cotton, but Mr. Gaines, who made the crops, gave me the information as near as he could. He was then stopping at Reeves'.

Q. Do you know who employed him or how many years he had been there?

A. Two years.

Q. Do you know who employed him these two years?

A. No, sir.

Q. You don't know who paid him?

A. No, sir.

Q. You don't know for whom he made the crops?

A. I do not; he was on the Linton place then.

Q. Did he tell you whether an-thing was owing to him or not?

A. He did; he told me the place owed him money.

Q. Did he tell you he had taken any steps to recover the money?

A. No, sir. He told me this, that he was not going to let that crop go away without getting his money.

Q. Is he living?

A. No, sir.

Q. Is Johnson living?

A. Yes, sir.

503 Q. Where does he live?

A. I believe he lives in the piney woods; some place; I don't know where.

Q. In what direction?

A. He lives about, I suppose, six or seven or ten miles off. He is out in the piney woods, some place eight or ten miles from the Quantico plantation. I don't know exactly where he lives.

Q. I suppose you could not tell the quantity of cotton yourself from your examination?

A. No, sir; I could not tell you; but there was a great deal of it; a large quantity.

Q. You did not count the bales?

A. Yes, sir; I did count the bales, but I do not recollect the number of bales now.

Q. Were the bales marked?

A. I think they were marked Q.

Q. Do you know the other mark?

A. I don't recollect now.

Q. If you do not know what suit it was against Linton you cannot give us the title?

A. Not entirely.

Q. The only name you remember was Urquhart?

A. Urquhart and the bank. The bank was one suit and the other suit was Urquhart's.

Q. Was not it the Bank of Louisiana?

A. I don't know whether it was or not.

504 By Mr. BECKWITH:

Q. What is your best recollection about this bank? Was it the New Orleans Bank?

A. It was the Bank of New Orleans.

Q. It was the bank represented by Elgee as attorney?

A. Yes, sir.

Q. Kilpatrick, the clerk, is dead?

A. Yes, sir.

Q. And Mr. Neal, the sheriff, knew nothing of these records, as he was not in town?

A. No, sir; he did not come back until after the destruction of the court-house.

Q. Have you been entirely round the Quantico plantation, on all sides of it?

A. Yes, sir.

Q. One portion of it is bounded by the bayou?

A. Yes, sir; it is bounded on two sides by the bayou. It lies in, bounded between the two bayous. Bayou Robert runs up the full length of the place one way and turns round and comes back to the road again, and runs in again back to Bayou Boeuf; then the bayou above comes round and comes near to where the Bayou Robert and makes the second bend.

Q. What distance of land prevents the Quantico from being an island?

505 A. It would be according to which way you run the lines. If you run them to the first bend of the bayou you would have an island there, but if you run it along to the Wells place—the bayous do not run to the edge of the plantation; they only run a portion of the way—it would be hard to make an estimate, but I suppose the line that runs up by Wells' is two miles off.

Q. There is a short road by the plantation there?

A. Yes, sir.
Q. Do you think that the plantation touches the road?
A. It might touch on Mayor Wells'.
Q. You are not certain whether there was a platform on the plantation or not?
A. No, sir.
Q. You are in the city tempor-ily?
A. Yes, sir.
Q. When do you contemplate leaving?
A. By the first boat.

To Mr. Gilmore: I was the probate judge who probated the will which was last probated of Stephen Duncan Linton.

It is agreed that the signature of the witness be dispensed with.

506 United States Circuit Court, Fifth Circuit, Eastern District of La.

MARIE P. EVANS and HUSBAND
vs.
DAVID URGUHART *et als.*
No. 7672.

Testimony taken on behalf of complainants under the 67th rule of the courts of equity of the United States, as amended, before F. A. Woolfley, examiner, duly appointed by said court to take the depositions of witnesses in the above-entitled cause.

NEW ORLEANS, *January* 14, 1882.

Present: E. H. Farrar and James R. Beckwith, Esqrs., for complainants; James McConnell, Esq., for The State National Bank, defendant; Thomas Gilmore, Esq., for David Urghart, defendant.

RICHARD H. HALL, sworn and examined for the complainants, says:

By Mr. FARRAR:

Q. Where do you live?
A. At Nos. 4 and 6 South Roman street.
Q. What business are you now engaged in?
A. An accountant.
Q. In whose employ?
507 A. For the present, in the employ of S. R. Perry, 183 Canal St.
Q. How long have you lived in this city?
A. Over fourty years.
Q. What business were you engaged in in the spring of 1864?
A. I was book-keeper and cashier of C. A. Weed & Co.
Q. Do you know James Madison Wells?
A. I know him by sight.
Q. Do you know whether James Madison Wells had any transactions with C. A. Weed & Co. in the spring of 1864?
A. I do. I saw him frequently in the office.

Q. What were these transactions?

Mr. McConnell, for The State National Bank, defendant, objects to the above so far as it relates to the aforesaid bank, defendant herein, the transactions of J. Madison Wells with C. A. Weed & Co. having no relation to the said bank.

Mr. Gilmore joins in the above objections.

A. The transactions were that Mr. Weed had cotton put in his charge for sale for account of James Madison Wells.

Q. Do you know what amount or number of bales of cotton C. A. Weed & Co. had for account of J. Madison Wells?

508 A. In the neighborhood of a thousand and two to a thousand and four bales and some few crates of loose cotton—from three to five crates, to the best of my recollection.

Q. Do you know what the proceeds of these sales amounted to?

A. It must have been close on to $330,000 or $340,000.

Q. Do you know where that cotton came from?

A. It came from Alexandria, Red River.

Q. How was it brought to New Orleans?

A. It was brought by a steamer, consigned to the United States quartermaster.

Q. How did it come from the quartermaster into the hands of C. A. Weed & Co.?

A. By order of Col. S. B. Holabird, the United States quartermaster at that time.

Q. Do you know what became of the proceeds of the sale of that cotton that was in the hands of C. A. Weed & Co.?

A. It was paid over to J. Madison Wells.

Q. Who drew the checks by which it was paid?

A. The last check was drawn by myself.

Q. Do you remember the amount of that check?

A. Some $256,000 and some hundreds; I do not recollect exactly the hundreds, but between five and eight hundred dollars and a few cents.

509 Q. Did you know Mr. Lapayarre, the president of the State National Bank?

A. Yes, sir; I called on him once or twice in company with Mr. James E. Zuntz.

Q. Where was he when you called on him?

A. In the back office of the State bank, corner of Royal and Conti streets.

Q. Did you ever see Mr. Wells and Mr. Lapayarre in company?

A. I never did.

Q. Were you in the office of C. A. Weed & Co. when this check was handed to James Madison Wells?

A. I was within the distance from here to that wall (— feet). I was in the adjoining office.

Q. Was anybody with Wells at that time, when the check was handed to him?

A. Mr. Weed was there and James H. McKee, and some other party. I don't recollect who it was.

Q. You do not know who that other person was?

A. I do not. I know that Mr. Wells was very feeble and unwell that morning, and he had to take two or three stimulants to keep him up while in the office.

Q. What was Mr. Zuntz' business with you and with Mr. Lapayarre?

A. I do not exactly know.

Q. Why did Mr. Zuntz go with you to Mr. Lapayere's?

510 A. I cannot recollect very distinctly why he went, but about something in connection with the cotton in the custody or consigned to C. A. Weed & Co.

Q. What cottons?

A. The cottons from Alexandria, Red River; from this e-pedition of Banks'.

Q. Have you any memory of whether it had any reference to the cotton held by C. A. Weed & Co. for account of Wells?

A. That I could not state.

Q. You do not remember what cotton?

A. No, sir; not distinctly. I don't know how it was settled, but I only went there once or twice with Mr. Zuntz.

Q. Why did Mr. Zuntz go with you?

A. I could not say distinctly unless it was in the interest of the bank.

Q. Did he appear in the transaction as the friend of the bank, representing the bank.

A. I cannot answer that question.

Q. All that you remember is that you went in company with Mr. Buntz to see Mr. Lapayere with reference to the cotton that came from Alexandria and in the hands of C. A. Weed & Co.?

A. Yes, sir; exactly.

Q. And what cotton that was your memory does not serve you?

A. No, sir; not at present.

Q. And who the party was that was present with Wells

511 when this settlement was made you don't know?

A. No, sir; there was another party present. I was there at the time. I was in the main office, adjoining the little office. I did not intrude myself into that back office unless I was called. It was Mr. Weeds private office.

Q. Do you know where the books of C. A. Weed & Co. are?

A. I would like to know. I could not tell you. A great many are very anxious to find them out.

Q. Do you know whether or not they are in existence now?

A. They must be in existence. They could not have been destroyed by anybody.

Q. Mr. John H. McKee, do you know whether he is alive or dead?

A. I have authentic information that he is dead. He died some four months ago.

Q. Where?

A. Some place in Missouri or in Chicot City, Arkansas.

Q. Have you any knowledge or memory at this time of how that

cotton was marked that was turned over by Col. Hurlburt to C. A. Weed and Co. for account of Wells?

A. I have a kind of recollection that it was marked "Q.," or
512 some portion of it, and, if I am not mistaken, some was marked Quantico. This is from hearsay, not having seen the mark myself; but I did not make out the account sales myself.

Q. How is your knowledge derived as to how it was marked?

[On the margin:] Don't know that Q. or Quantico was.

A. From having the account sales handed me to draw the checks, and also I had reference to the cotton books; besides, I looked over them all the time.

Q. Were you the book-keeper of the firm?

A. I was Mr. C. A. Weed's managing man.

Q. You had general management of the affairs?

A. Yes, sir.

Cross-examined by Mr. McCONNELL:

Q. What Mr. Zuntl do you refer to when you speak of Zuntz?

A. The James E. Zuntz that I mentioned.

Q. Have you any personal knowledge that a dollar of this money was ever paid to the Louisiana State Bank?

A. By whom?

Q. Any of this money that you speak of and drew checks for by C. A. Weed & Co.?

A. No, sir; I have no knowledge of what became of the proceeds after C. A. Weed & Co. paid it over.

513 Q. You have no knowledge that a dollar of that money was paid the Louisiana State Bank?

A. None whatever.

Q. You say you gave a check to J. Madison Wells for $256,000 as the proceeds of some cotton that came down on the transports consigned to Holabird, which you say came from Alexandria?

A. Yes, sir.

Q. How do you know it came from Alexandria?

A. From the steamer having left there.

Q. How do you know that the steamer came from there?

A. From the reports.

Q. From the reports only? You were here?

A. Yes, sir.

Q. That is the only way you know? You were not in Alexandria, and you did not come down with the transports?

A. No, sir; I did not.

Q. What did Wells do with that check for $256,000?

A. I don't know positively myself. I only know it from hearsay.

Q. You don't know yourself what he did with it?

A. I do not know what he did. I know that he drew it
514 and know that he used it. Mr. Weed was charged with the check.

Q. What bank was that check drawn on?
A. The First National Bank.
Q. You say that Mr. Zuntz was there with Mr. Wells?
A. No, sir; I did not say so.
Q. You state that Zuntz went with you to the bank?
A. I did.
Q. That is, with yourself?
A. Yes, sir.
Q. Did J. Madison Wells go with you to the bank at any time?
A. No, sir.
Q. Not to the Louisiana State Bank?
A. No, sir. I do not know that I ever spoke to Wells in my life.
Q. When you went to the bank with Mr. Zuntz did you see Mr. Lapayrre at the bank?
A. Yes, sir. We were all three sitting together. He introduced me to Mr. Lapayree.
Q. How many interviews did you have at the bank with Mr. Lapeyree?
A. It may have been two, maybe three. I cannot recollect very distinctly.
Q. Can you remember who was present at these interviews besides you, Lapeyree, and Zuntz?
A. I do not recollect of anybody being present.
515 Q. Nobody was present except your three selves at these interviews?
A. No, sir.
Q. Now, although you were present at the bank with Mr. Lapeyrre and Mr. Zuntz you still say that you have no personal knowledge of the bank ever having received any money for this cotton?
A. No, sir; I have no personal knowledge.

By Mr. FARRAR:

Q. Do you know whether during the year 1864 C. A. Weed & Co. received cotton from any other source than from the Red River expedition conducted by General Banks?
A. Yes, sir; we received cotton by various steamers.
Q. From what places?
A. From the neighborhood of Alexandria—out of Red River.
Q. But was there any other cotton came to this town, except Red River, during this time from any other place?
A. Certainly; we received cotton from other quarters.
Q. From where?
A. Mobile, a great deal of cotton.
Q. But I mean from the Mississippi river—Louisiana?
A. No, sir.
516 Q. The Red River expedition was the only one of any importance?
A. Yes, sir; bringing cotton to this city.
Q. The cotton that was turned over by Col. Holabird to C. A. Weed & Co. for account of Wells, when was it brought to New Orleans and how?

A. It was brought down by several of these transports. I believe among the number was the Meteor and the Sallie Robinson, I believe, and some other boat—I don't remember the names now—amounting to some twenty-four hundred and sixty-three bales, from April 26th to May 7th, 1864.

Q. The boats all arrived here between these dates?

A. Yes, sir; and they brought down small parcels at a time, and fifteen hundred and sixty-nine crates or bags of cotton.

By Mr. McConnell:

Q. Have you any recollection of the date of the check you gave J. Madison Wells for $256,000?

A. It must have been in May.

Q. Of what year?

A. 1864, to the best of my present recollection.

Q. Why do you say it must have been in May, 1864?

517 A. Because I recollect seeing him in there; we did no such large transactions after that year.

Q. Was that cotton that you have described first in your testimony-in-chief and that you now describe in your testimony-in-chief again brought here between the 26th April and the 7th of May?

A. No, sir; that is another question. Mr. Farrar asked me what lots of cotton were received some portion of this time; possibly about half that lot.

Q. Was the cotton that you paid Wells for brought to this city between the 26th April and the 7th of May, 1864?

A. To the best of my knowledge.

Q. What date was the cotton brought to this city that you described in your examination-in-chief and consigned to Holabird?

A. I do not recollect the particular dates, but it was after that expedition left Alexandria, some time in the spring of 1864.

Q. Some time in the spring of 1864?

A. Yes, sir; some time between April and May, as I told you.

Q. Did the cotton that you paid Wells for come at the same time or on different boats; and, if so, on which boat, as well as

518 you can recollect?

A. That I don't know—whether it came here in one lot. I don't think it came all in one lump.

Q. Do you remember the date when Banks' expedition returned to this city from Alexandria?

A. Not distinctly.

Q. Do you remember what year it was in?

A. It was certainly in 1864.

Q. Do you recollect in what month they arrived here in this city?

A. I cannot tell you. He was given a reception here, and I know Mr. Weed spent about $20,000 towards giving him a reception after he returned. I think it was early in April. I do not recollect it distinctly; I think it was rather cool weather then.

Q. The cotton that was consigned to Holabird did not come here between the 26th of April and the 7th of May?

A. I don't know; I presume it must have. I do*nt* not know between exactly what dates.

Q. You read a moment ago from a memorundum in writing in your hand from which you gave the dates from the 26th April to 7th of May?

519 A. Yes, sir.

Q. Where did you get that memorandum from?

A. I got it from the records at the state-house.

Q. What records?

A. A gentleman showed them to me and asked me to refresh my memory.

Q. What gentleman?

A. Mr. Hutchison.

Q. What records were these?

A. Showing the receipts of cotton received at that time out of Red River by C. A. Weed & Co.

Q. Where are these records?

A. In the State Library, I believe. I did not see them.

Q. Then the memorandum he *you gave* is the memorandum you have, he telling you he had seen them?

A. Yes, sir.

Q. You did not examine these records yourself?

A. No, sir.

Q. Then, in stating that this cotton arrived between the 26th April and the 7th of May, you read from the memorandum which the gentleman gave you and which you did not obtain by personal inspection yourself?

A. Yes, sir, although I could have obtained it myself this morning, but I did not feel very well.

520 Q. What I want to get at, as near as you can fix it, when the cotton did arrive here that *you* was marked "Q," and marked Quantico. In what month in 1864 did that cotton come to New Orleans and by what conveyance, if you know?

A. I did not keep the cotton books at that time. I cannot recollect whether it came in one lot or several lots.

Q. You have no personal knowledge on the subject—you did not see the cotton landed on the levee?

A. No, sir.

Q. Your business was in the office?

A. Yes, sir; and outside.

Q. All you know is there was some cotton on the book marked "Q." and — Quantico?

A. Yes, sir.

Q. That is all?

A. Yes, sir.

Q. Can you state how many bales?

A. Between two—they counted it two—thousand bales. I don't recollect how many were marked "Q." and how many Quantico.

Q. Were there any other marks?

A. Not that I recollect. I am speaking of the account sales made out for Madison Wells.

521 Q. Are you able to say whether the cotton that arrived here, that you have stated came between the 26th April, 1864, and the 7th May, 1864, was the cotton that was brought down by Banks' expedition that came from Alexandria?

A. I am not able to say that from my own knowledge.

Q. Do you know of some cotton that was brought to this city by Stevenson from Red River?

A. Not distinctly; I do not.

Q. You don't know when it arrived here?

A. No, sir; I do not.

Q. You have no knowledge about that at all?

A. No, sir.

Q. You mentioned the names of some boats that brought down this cotton, and one was the Sallie Robinson?

A. Yes, sir.

Q. How do you know the Sallie Robinson brought it down?

A. As I told you before, I got this memorandum taken from the books by Mr. Hutchison, who wanted me to go and see it myself.

Q. And that is the only way you know it now?

A. Yes, sir.

Q. And that is the way you know it. Of the other boats, you took it from the memorandum furnished by Mr. Hutchison?

522 A. Yes, sir.

Q. That is why you have stated it was brought down by the Sallie Robinson?

A. Yes, sir.

Q. What other boats?

A. The steamer Meteor and the Sallie Robinson.

Q. You were looking at the same memorandum now?

A. Yes, sir.

Q. That is the same memorandum that was made for you, as you have described in your testimony, by Mr. Hutchison?

A. Yes, sir; I wrote it down.

Q. What Mr. Hutchison is that?

A. I think his name is C. H.

Q. C. H. Hutchison?

A. Yes, sir.

Q. Where does he live in the city and what is his business?

A. I think he is a carpenter and is proprietor of the Mississippi City Hotel.

By Mr. FARRAR:

Q. With reference to this memorandum, will you take the trouble of going to the state-house yourself?

A. Yes, sir; he wanted me to go to the state-house, and I could not do it.

Q. This memorandum was made by Hutchison to save you

523 the trouble of going to the library?

A. Yes, sir.

Q. Go there and examine these documents and state whether or not this memorandum you have given here is correct.

A. I am certain of it.

(Signed) RICH'D H. HALL.

Sworn to and subscribed before me January 14, 1882.

F. A. WOOLFLEY, *Examiner.*

JOHN M. MARTIN, a witness produced, sworn, and examined for complainants, says:

By Mr. FARRAR:

Q. Where do you live?

A. I live in this city on Coliseum street near Napoleon avenue.

Q. What business are you engaged in now?

A. I am employed in the custom-house as watchman.

Q. Did you live at any time at the parish of Rapides?

A. Yes, sir.

Q. What was your profession in 1864 and previous?

A. I was a Red River pilot and captain.

Q. Did you ever live in the parish of Rapides?

524 A. Yes, sir.

Q. Where?

A. I lived in Alexandria for a portion of the time, while I was there, and then on Bayou Rapides, five miles from Alexandria.

Q. When did you live in Alexandria and when in Bayou Rapides?

A. After the fall of this city I remained in Alexandria—I think that was in 1862—and I remained there in 1864.

Q. When and how did you leave Alexandria in 1864?

A. I left there on the steamer Meteor No. 3, to come to the city of New Orleans.

Q. You came on her to this city?

A. No, sir; a portion of the way. I came to Bayou Sara on her; her wheels broke down and she could not get along, and she stopped there about a day to repair and I transferred my family onto the Kenneth, a St. Louis boat. I think her name was the Al. Kenneth.

Q. Did the Meteor No. 3, of your own knowledge, reach the city?

A. Yes, sir.

Q. How do you know that?

A. I was on board after she arrived, for I left some of my baggage on her when I transferred my family onto the Kenneth, and I went to get it.

525 Q. Do you know James Madison Wells?

A. Yes, sir.

Q. How long have you known him?

A. I have known him personally during the war at Alexandria, but I have known him for thirty-five years.

Q. You met him on the boat?

A. Yes, sir.

Q. Where were you during the time that the fleet lay at Alexandria, and what were you doing?

A. I was employed on the fleet a portion of the time and I was at Alexandria instructing the pilots about the channel on the falls. Q. During a portion of the rest of the time I was in Alexandria making cotton for General William Bailey, with another man, Mr. Rachal.

Q. Who employed you to make this cotton?

A. Mr. Rachal, this other man.

Q. Where was the cotton brought from?

A. From General Bayley's place.

Q. By the United States Government's wagons?

—. ——.

Q. What was the relative positions of the Bayley place to the Quantico place?

A. I don't know. I don't know where the Quantico place is. I was never out further than the Bayley place.

Q. Was Bayley's place on the line of the railroad?

526 A. Yes, sir, it is.

Q. Did you see that railroad in operation?

A. Yes, sir; I was about there all the time when I was in Alexandria.

Q. Who was operating it, do you know?

A. A man named Smith, that owned the road. I think that Wells had the road under charter.

Q. For what purpose?

A. For bringing in produce of sugar and cotton.

Q. Do you know of any cotton that Wells brought in on that railroad?

A. Yes, sir; he brought in that Quantico cotton on the road, because I saw it coming.

Q. How much Quantico cotton did he bring in?

A. I cannot tell you exactly how many bales, but a large quantity.

Q. Where did you see that cotton?

A. I saw it near the depot in front of the town.

Q. On the bank of the river?

A. Yes, sir.

Q. What was done with that cotton after it was brought there?

A. Shipped on board of steamers.

Q. What steamers?

A. I could not designate all the boats; but the boat I came down on had considerable on board.

Q. How much did she have?

A. Four or six hundred bales. She was not a regular cotton-boat, but she was pretty well loaded with cotton.

527 Q. Do you know that Wells had charge of the cotton?

A. I saw him superintending the shipping of the cotton there on the boats.

Q. Of this cotton marked "Quantico"?

A. Yes, sir.

Q. How was that cotton marked?

A. Quantico in full some of it and some of it marked simply "Q." Then there was some cotton on the boat marked "Wells" in addition to that.

Q. What became of that Bayley cotton that you helped to mark?

—. It was shipped in different ways on the boats. There was some shipped before the retreat of the Federal forces. It was thrown off, and I did not know what became of it eventually.

Q. Do you know what boat Wells came down on to the city there?

A. I do not.

Q. Did you see him afterwards in the city?

A. Yes, sir; I did.

Q. And the boat you came down on was named the Meteor No. 3?

A. Yes, sir.

Q. Could you give the names of any of the boats that were transports in that fleet that took cotton on board and came to the city?

528 A. I cannot remember now any particular one. There were a great many there—thirty or forty, I suppose. The Groesbeck was one; I remember that. I did not tax my memory with remembering anything about that.

Q. Did all these boats come to New Orleans, or did some go up the River?

A. I think that some went up the river. I am not positive.

Q. From the mouth of Red River?

A. Yes, sir.

This witness died before I could get his signature. I was ill from January to May, 1882.

W.

United States Circuit Court, Fifth Circuit, Eastern District of Louisiana.

MARIE P. EVANS and HUSBAND
vs.
DAVID URQUHART *et als.* } 7672.

Testimony taken on behalf of the complainants under the 67th rule, as amended, of the circuit courts of the United States before Francis A. Woolfley, examiner, duly appointed by said court to take the depositions of witnesses in the above-entitled cause.

NEW ORLEANS, *February 25th*, 1882.

529 Present: E. H. Farrar, Esq., for the complainant; James McConnell, Esq., for State National Bank, defendant; Thomas Gilmore, Esq., for other defendants.

NOTE.—At the last sitting the time for taking testimony was extended as follows:

The complainant to have, for taking her testimony, until the first

Monday in April, and the defendants to consider and state at that time what time they desired for rebutting testimony.

MARIE P. EVANS, complainant, produced, sworn, and examined in her own behalf, says:

By M-. FARRAR:

Q. You are the complainant in this case?
A. Yes, sir.
Q. What was your late husband- name?
A. Stephen Duncan Linton.
Q. What is your present husband- name?
A. William R. Evans.
Q. When were you married to Mr. Linton?
A. In 1855.

Q. Do you know anything about what property was seized
530 on the Quantico plantation under the writ issued in the case of David Urquhart against Linton?

A. Yes, sir.
Q. State how.
A. I was there in the early spring of 1863. The property was all on the place at that time.
Q. In whose possession?
A. In the possession of Governor Wells, who was present.
Q. Was he living on the place?
A. He was living on the place.
Q. In possession and charge?
A. In possession and charge.
Q. Can you state what amount of cotton was in his possession and charge?
A. I can only state from hearing my father say that there had been a special protection to the cotton.

Mr. McConnell, for the State National Bank, objects as hearsay.

Q. You don't know the amount of the cotton?
A. I never counted it.
Q. Did you see the cotton yourself?
A. Yes, sir; a part of it was baled and a part unbaled. The houses were full, some in the pens, and the gin-house was full.
Q. When did you leave the place?
A. After the vacation of General Banks from Red River, and then I left. We were there some ten days or about two weeks after Banks' vacation.

531 Q. When were you next on the place?

A. Not until lately—about four years ago, I think. Then I went up to probate the will; in 1874 or 1875.
Q. Where were you during the interval between 1863 and the bringing of this suit?
A. In Europe.
Q. When did you return from Europe?
A. In 1870 or the latter part 1869.

Q. When did you go to Europe?

A. I went to Europe in the beginning of 1864, but I was here twice during that time.

Q. When were you here?

A. I came on a visit; I was transitory here. I came here in 1865, with my husband, in December or October.

Q. When was your husband interdicted; do you remember?

A. I think in the beginning of 1866.

Q. Where were proceedings taken?

A. In Paris.

Q. You went back to Paris in 1866?

A. Yes, sir; in 1865, and returned again in 1866.

Q. After you went back when did you return to this country again?

A. In 1869.

Q. Who was in possession of the Quantico plantation, or have you or your husband ever been in possession of it since 1863?

532 A. No, sir; never.

Q. When did your husband die?

A. In 1867.

Q. In whose possession was the property in the interval between 1863 and 1867?

A. It was in the possession of W. & D. Urguhart first. When I came from Europe in 1865 with my husband he had come by agreement with William Urguhart to Paris, and at the dinner table, dining in our own house, he told Mr. Linton that he would come back——

Mr. McConnell objects to the above as hearsay.

WITNESS: He would come back, and that we might take possession of the estate, rectifying matters and remedying the disasters in consequence of the war. We hastily packed up, with William Urguhart and his wife, having had no idea of leaving before that, and when we got here we learned the next morning that the plantation was sold, and my husband was so angry he would not go and see Urguhart; so I went to see him, but he said he was a mere cat's paw in the matter of the bank.

533 Mr. McConnell objects to the statements of the witness as to what Urguhart said or the statements witness may have made or what others may have said to her as conversations between third parties, not under oath, and out of the presence of the defendants; therefore not binding upon them.

Q. What did Urguhart say?

—. He said that I must have recourse to Mr. Lapeyere, and that if I would go and see him he had no doubt that arrangements could be made by which Mr. Linton could regain, enter upon, his plantation; that he sued on the note only as indorser, and that he sold the note six weeks after it came into his possession; that the notes belonged to the bank and not to him, and therefore I returned to the hotel and left for Europe.

Q. Did you see Mr. Lapeyere?

A. Yes, sir; I did.

Q. Did you have any conversation with Lapeyrre?

A. Not at that time; I did not see him on that occasion; he was out.

Q. Did you during that visit have any conversation with regard to this subject-matter?

A. No, sir; only to write a letter, a proposition, to the bank.

Q. Mr. Lapeyrre was acting as president of the bank?

534 & 535 A. Yes, sir; he was.

Q. Did you make the proposition in writing to him?

Mr. McConnell objects as leading.

A. I did make a proposition to him in writing at the request of Governor Hyams.

Q. Who was Governor Hyams?

A. He had been a partner of Elgee and conducted the affair in some way which I did not ask or know, but he came to me on a visit, partly socially and partly professionally, as he said, and he said Mr. Lapeyrre would make some arrangement to get the estate, and I told him I had not seen him, and he told me then to write. On what terms, I asked, and he said, Suppose you offer fifty per cent. and take possession of the estate; so I made the offer and it was declined.

Q. Did you have a conversation with Lapeyrre on that occasion?

A. Nothing more than——

Q. But I mean upon the occasion of your proposition being declined.

A. I did not see him or see any of the board. The proposition was declined, and Governor Hyams told me it was declined.

536 Mr. McConnell and Mr. Gilmore objects as hearsay.

Q. You started to say something about Urquhart's calling himself a cat's paw, and you asking him what he meant by that. Please state what was said with reference to that.

Mr. McConnell and Mr. Gilmore object as before to the question and answer.

A. His answer was that he had brought the suit, as his name was on the note, but that he sold the note six weeks after it came into his possession to the Louisiana State Bank, and that he simply brought the suit for them.

Q. Do you know J. Madison Wells?

A. Yes, sir.

Q. When and how did you find out what had become of the cotton which you saw on the Quantico plantation in the spring of 1863, or did you ever find out?

Mr. McConnell and Mr. Gilmore object to the question on the ground that the witness has not stated that she found out what became of the cotton or how she found it out.

A. The first conversation I had on the subject to try and
537 find out was with Wells himself.

Q. What time?

A. When he first sat in the gobernatorial chair.

Mr. Gilmore objects, as it is the conversation of third parties.

Q. What did he say?

A. He said he had removed four hundred and eighty-odd bales; he could not give an account of any more. Then I asked him why as custodian he should give an account of it all.

Q. What did he say?

A. He said, "Madam, I can give no other account more than that," or some very evasive answer.

Q. Did he state what he had done with it after he had removed it?

A. He did not.

Q. Why did you not bring this action then?

A. I tried to do it, but I failed to get any attorney to take the case at all.

Q. To whom did you make application?

A. I was recommended to several. I made my first application to Mr. William Grant, and I made another application to
538 Hickey Morgan, but I was not much surprised at their refusal, because the times were such that it was almost impossible to get legal justice.

Q. Now, in the answer of the defendant filed in this case a quotation is made from the testimony that yourself has given in the case of your claim against the United States for property taken from the plantation back of Baton Rouge. I will read it:

"Respondent says that as to a large portion of the said alleged losses it is manifest that the complainant Marie P. Evans knew before this suit was brought that respondents were in nowise liable therefor, from the fact that before the board of commissioners of claims appointed under the act of Congress of March 3, 1871, she testified on the 10th November, 1873, under oath as follows:

"Mr. Linton had endorsed some notes, and those notes were in possession of W. & D. Urguhart, of New Orleans. They held, of course, a privilege on his crop and plantation, and at the time of the secession—I think the first winter of 1861—Governor Moore issued an order that no cotton should be brought into New Orleans;
539 that it was in danger of becoming a bait for the enemy, or some such nonsence, and hence all the cotton remained on the plantation.

"Now, when General Banks went up Red River there were seventeen or eighteen hundred bales of cotton on the place, five or six hundred baled and ready for shipment, and the rest partly bailed and stacked in the houses.

"Q. Did Governor Wells say to you that he had taken from four to five hundred bales of your husband's cotton?

"A. Yes, sir; that he had moved it as keeper.

"Q. What became of the balance of that cotton?

"A. It was burned by the Confederates. A personal acquaintance

and friend told me himself that he put the torch to it. I asked him the reason, and he said, 'Because you had all been on the plantation a short time before, and when we came back there and found everything had been left we knew, of course, that what the Federals had protected we had a right to burn.'

"Q. Did he burn your dwelling?

540 "A. Yes, sir; they burned all the cabins and negro houses, twenty-four or twenty-six in number, at Quantico, and they burned the dwelling and cabin houses; they burned everything."

Q. At the time you gave that testimony with reference to the statement of this friend of yours did you have any personal knowledge of what cotton was burned on the place at all?

A. I knew nothing of it from the time I left here.

Q. Who was the friend you spoke of?

A. Nemours Brenvenieu.

Q. At the time you gave this testimony what was you impression as to the amount of cotton that was burned there?

A. I suppose the entire crop had been burned with the exception of what Wells told me he had taken away.

Q. What did you subsequently discover about this statement of Nenious Brenvenieu?

A. It was merely hearsay, because when he was put on oath—and if you will here read his testimony you will find where he denies having made the statement or that he had not burned or put the torch to it at all.

541 Q. Mr. Brenvenieu made you that statement?

A. Yes, sir; I sup-ose in a quizzing way; it was his character.

Q. When you gave this testimony you were under the impression that the majority of that cotton was burned?

A. Yes, sir; but his oath subsequently reli-ved all that.

Q. You state that the testimony of Brenvenieu is found in the same record where your testimony is found?

A. Yes, sir.

Q. Did you ever have any conversation subsequent to this time with Wells as to what became of that cotton prior to the institution of this suit?

Mr. McConnell and Mr. Gilmore object.

A. Yes, sir; before I brought this suit.

Q. Where was it?

A. At the St. James Hotel.

Q. What was the conversation?

A. He asked me why I never brought suit, and I told him I had the advice of lawyers that disagreed with me on the subject, and I could not find any one to bring it, and Wells said that he

542 had learned from one of the stockholders——

Mr. McConnell and Mr. Gilmore objects to all these conversations with Wells as evidence on the ground heretofore stated to similar testimony.

Q. Proceed.

A. He stated that he had learned through one of the stockholders that this suit had been anticipated ever since the time I returned from Europe.

Mr. McConnell and Mr. Gilmore object on the further ground that it purports to be a statement not under oath from a stockholder.

Q. Proceed with your statement.

A. He said that the suit had hung like the sword of Damocles over the head of Kennedy ever since the reorganization of the bank.

Q. Did he state anything of what became of the cotton which he had brought from the Quantico here to New Orleans?

Mr. McConnell and Mr. Gilmore object, and, by way of privilege, co-nsel for complainant- will agree that this objection ap-
543 plies to all similar testimony of the witness; that it is hear-say testimony, and the same objection and the same grounds apply to all conversations narrated by the witness.

Q. (Repeated.) Did he state anything of what had become of the cotton which he had brought here to New Orleans?

A. He said that his position had been a very peculiar one in the matter; that he had been very badly treated by the bank, and that they had not complied with their contract with him.

Q. And what that contract was?

A. He never said, but his closing remarks were, Should you bring this suit, Madam, depend upon it, you shall have my aid in the matter.

Q. Have you ever had any communications with him since that time?

A. I never saw him since.

Q. Did you ever write to him?

A. No, sir.

Q. You never made any approaches to him at all?

Ans. No, sir; never.

Q. You never asked his assistance?

A. No, sir.

Q. Have you any personal knowledge of a sale made of this cotton on the Quantico plantation by your husband while
544 in Texas?

A. In 1863 my husband and farther, being very anxious about the safety of the cotton, as we were going through Texas in transit to Europe, talked the matter over in my presence. That is my only knowledge.

Q. You simply know by these statements that the cotton was sold?

A. I simply know that they wanted to take the cotton where it would be safe, and a letter was written to Mr. Elgee to permit its removal, and Mr. Elgee declined unless they paid him $11,000 in gold and have a custodian to follow the cotton. They wrote that letter in my presence. This proposition was declined, because they could not get $11,000 in the Confederacy at that time.

Q. This letter was written to Elgee from Texas?
A. Yes, sir.
Q. Have you ever had a conversation with David Urquhart since your conversation with him in 1865 and 1866?
A. Yes, sir; I was sent to him by Mr. William H. Hunt.
Q. When?
545 A. About the time of the probation of the will or shortly after; I do not remember the month.
Q. What year was that?
A. 1876 or 1877, I think.
Q. What was the purport of that conversation?

Mr. McConnell objects for the reasons already stated.

A. He said he was very much injured by being made a party to this suit, and I asked him why, and he said he had nothing to do with it, and recalled the conversations of years before. "Mrs. Evans, you knew I was acting for the bank and you had no right to bring this suit against me." It strikes me that conversation took place in 1877.
Q. What was Urquhart's financial condition at that time?
A. I don't know; but he simply remarked in closing the conversation, "I do not care. I have got bread and meat for my family, and that is all I want."
Q. Was that before the failure of the savings institution?
A. Yes, sir; it was.
Q. Do you know what his financial condition is now?
546 A. No, sir.
Q. The bank of which he was president failed, however?
A. It did.
Q. Did you know in 1865 what Wells had done with the cotton which he admitted he had carried off?
A. I only knew partially.
Q. Did you find any trace of it—what became of it?
A. No, sir; except we knew that it had gone into the hands of those in power, and had it in custody—that it had gone. I went to Mr. Lapeyere's upon the subject in 1866, as he was the president of the bank; it was in the early spring of 1866.
Q. Was that on the occasion of your second visit?
A. Yes, sir. I came there partly for that.
Q. What did Mr. Lapeyerre state on that occasion?

Mr. McConnell objects on the grounds heretofore stated.

A. It was through Governor Hyams that I went to Mr. Lapeyerre. I would not know where to go if he did not come with me.
Q. What proceedings were those that you signed after Mr.
547 Linton was interdicted with reference to the seizure of the property by the bank?
A. I don't know. I was in Hickey — Morgan's office and Governor Hyams asked me to sign the papers after he came in and I said, No, not until Mr. Morgan reads it. And Mr. Morgan told me

to sign the papers, it would relieve me from all obligation for the debts of the Linton estate.

Mr. McConnell objects.

Q. Did you know that you were signing a consent that this property was to be seized and sold?

Mr. McConnell objects.

A. No, sir; not I. I offered them $25,000 not to seize it. In 1866 I offered Mr. Lapeyere $25,000 for the estate and he refused. This was in conversation, but the written offer was made in 1865. I recollect by the conversation that was in 1866, and he said he wanted $35,000 cash for it. I told him I could not give it, and I said to him, Is it possible that they, having taken all the cotton, the bank was not satisfied; and he said they were not satisfied and they would have taken as much more if it was on the estate.

548 Mr. McConnell objects about the bank having taken all the cotton, as such conversations heretofore objected to.

Cross-examined by Mr. GILMORE:

Q. The war broke out in the year 1861. Where were you at that time?

A. I returned from Europe some time in the winter of 1860, and I was either on the plantation or in the city.

Q. What plantation?

A. My father's place at Baton Rouge.

Q. When the war broke out where were you?

A. I was there in the spring of 1861.

Q. You were on the plantation at Baton Rouge?

A. Yes, sir.

Q. What is the name of the plantation?

A. Richland.

Q. How long did you remain there?

A. All the summer.

Q. Where did you go when you left? What time did you leave?

A. I left in the winter, to spend the winter in the city of New Orleans.

Q. Where did you go after that? When did you leave New Orleans?

549 A. In October or November, after the city's possession by General Butler.

Q. Where did you go?

A. Back to the Richland plantation.

Q. Where did you go from there?

A. From there we went to Mandeville and remained there a few weeks, and then removed to the Quantico plantation.

Q. When did you reach the Quantico plantation?

A. In the spring of 1863.

Q. What time in the spring of 1863?

A. About ten days before General Banks' occupation, I think.

Q. Do you know when General Banks' occupation took place?

A. I was going to say his first occupation.
Q. Do you know when that took place?
A. Yes; in the spring of 1863.
Q. What time in the spring?
A. I don't remember the dates. I don't know. It might possibly be in April or May.
Q. Who was with you at that time?
A. My husband, my mother, and hous-hold.
Q. And your farther?
A. Yes, sir; and my uncle and his wife and children in transit.
550 Q. Then you only stopped there tempor-*ia*ly?
A. My uncle and his family were in transit, and we were there indef*f*inately.
Q. You were there without any intention of remaining?
A. Without any intention of remaining. Governor Wells was there as custodian, living on the place.
Q. How long did you stay there?
A. For perhaps about two weeks. After General Banks' departure we left.
Q. Where did you go to?
A. To Houston, Texas.
Q. By overland?
A. Yes, sir.
Q. From Houston where did you go to?
A. To Matamoras, with the intention of taking an English steamer to Europe.
Q. Why did you not come to New Orleans to take the steamer?
A. Because my husband did not want it. He preferred to go direct by sea.
Q. It was shorter from New Orleans than Matamoras?
A. Yes, sir; but he liked that; that was his pleasure. Besides, he had large cotton transactions in Texas.
551 —. Was he dealing in cotton in Texas?
A. Yes, sir.
Q. And shipping cotton by way of Matamoras to Europe?
A. I don't know that. I know he was purchasing cotton.
Q. Did he have any negotiations with the agents of the Confederacy with reference to the cotton that was on the plantation?
A. I don't know.
Q. Did your farther have any transactions for selling that cotton?
A. No, sir.
Q. In 1863, from Matamoras you went to Europe?
A. Yes, sir.
Q. What time of the year was it that you left Matamoras?
A. From Matamoras we went, in December, 1863—on the very first day of January, 1864—and came to New Orleans. The English steamer broke her shaft and could not leave Rio, and we came here.
Q. What vessel, then, did you go on?

A. We did not take passage and could not leave, and we were obliged to come back to New Orleans.

Q. How did you come?

552 A. We came on a transport—my farther, mother, and myself. My husband took a schooner and went to Havana.

Q. How long did you remain here after your return?

A. A short time—I don't remember; a few weeks.

Q. Did you state then where you went?

A. To Havana, and we stayed there six months, and then went to Europe.

Q. What time in the year was that?

A. In the spring of 1864.

Q. How long did you remain in Europe?

A. I remained there until 1865, and then I came here with my husband.

Q. You did not visit the Quantico plantation after that until you went to probate the will?

A. Yes, sir.

Q. How did it happen that you removed from the plantation back of Baton Rouge in 1863 and found yourself afterwards in the Confederacy?

A. Not in 1863; in October, 1862.

Q. Baton Rouge was within the Federal lines?

A. No, sir. Butler had withdrawn his troops, but he had possession of it before that, in the spring, and on his assertion that he did not occupy the place we went home. In twelve days after-

553 wards the troops came again and we went to Mandeville. We found that place gloomy and cheerless, and we made a caravan of our carriages and wagons and went to the Quantico plantation.

Q. Why did you not come to New Orleans instead of to the Quantico?

A. Because that was my husband's property, and it had been my home.

Q. Did you keep any copy of the letter you wrote to the Louisiana State Bank?

A. Unfortunately, I did not.

By Mr. McConnell: You said something in your testimony-in-chief about Mr. Elgee wanting $11,000 in gold, and that you declined to pay it, because you could not raise that sum in gold in the Confederacy. When was that?

—. That was in 1863, in the early summer, shortly after we arrived in Houston. We left for Houston ten days after Banks' vacation of Red River.

Q. You were in Houston, Texas?

A. Yes, sir.

Q. When Elgee made that demand for $11,000 in gold you were in Houston, Texas?

A. Yes, sir.

Q. And you declined?

A. I heard my farther and husband decline. I was a wife then

and had no business to intermeddle. I heard the letter
554 read on which my farther said that Elgee wants $11,000 and a person to follow the cotton.

Q. And they declined to do it?

A. I suppose so, because there was nothing done.

Q. Somebody was to follow the cotton?

A. The letter read that he was not willing that they should remove the cotton from custody unless they would send to him $11,000 in gold and let him deputize some person to follow the cotton.

Q. Then, provided they gave him the $11,000, he was willing to give them this cotton?

A. But to have a person in charge of it. My husband was very angry at the expression.

Q. Elgee's demand was $11,000 in gold?

A. Yes, sir.

Q. If that was paid was that all his demand?

A. My impression of the letter was that if they paid him $11,000 in gold they might remove the cotton, provided they allowed Elgee's representative to follow the cotton.

Q. What was he to get if the $11,000 was ever paid?

A. My farther's proposition was for the cotton to be sent there, and they could sell it and pay the debt twice over. He thought it very hard that they should keep this cotton in the custody of the sheriff when they could take it to Texas and get twice as much for it.

555 Q. Your husband was to pay $11,000 in gold?

A. Yes, sir.

Q. To whom?

A. Mr. Elgee, because he represented the bank.

Mr. McConnell objects to this statement on the ground that it is not responsive to the question asked of the witness—that is, whom Elgee represented.

Q. How long were you on the route going from the Quantico plantation to Houston, Texas.

A. About ten days; possibly not so long.

Q. When was it you gave your testimony before the Court of Claims that you stated in your examination-in-chief, in which you say that you stated it on some information given you by Benvenien?

A. I never was before the Court of Claims.

Q. In what court was that testimony taken which your co-nsel read?

A. Before the Southern Claims Commission.

Q. In what year did you give that testimony?

A. In 1873, I believe.

Q. What was the amount of the claim that you prosecuted
556 before the Southern Claims Commission—in that case in which you gave your testimony?

A. I don't recollect the exact amount; it was for one of these first-class estates of the State of Louisiana.

Q. About what amount?

A. I don't know.
Q. Was it $100,000, $200,000, or $300,000?
A. Possibly more.
Q. Were you successful in it?
A. No, sir.
Q. Did you realize nothing from it?
A. Nothing.
Q. How many years were you prosecuting that claim before the Southern Claims Commission?
A. I don't remember. I don't think very long.
Q. About how many years?
A. I really do not recollect. I cannot say. It was totally in the hands of the attorneys, and I paid no attention to it, except when I was called upon as a witness to give testimony.
Q. I suppose, in the communication that you speak of in your testimony-in-chief, that you said you wrote to the bank and you regretted that you had not kept a copy—in answer to the question of Mr. Gilmore?
A. Yes, sir.
557 Q. Why do you say that you regret having not kept a copy?
A. Because the counsel have objected to so much of what I have said as hearsay that if I had the written document it would be better. I dare say it exists.
Q. In that communication you make your statement fully to the bank?
A. I recollect that in presence of Mr. Hyams and at his dictation making a proposition to the Louisiana State Bank, pledging myself for fifty per cent. of the amount they asked of the estate—that is, of the $35,000. It might possibly be fifty per cent of the whole.
Q. Would you recognize that letter if you saw it again?
A. I think so.

Witness is now presented with the letter referred to by Mr. McConnell, which he offers in evidence, marked Complainant'- No. 1.

WITNESS: That is the letter. Mr. Hyams dictated this letter.

Mr. McConnell objects to the witness' statement that Mr. Hyams dictated the letter, as not responsive to the question
558 asked.

It is agreed that a copy of the above letter, certified by the examiner, may be filed in lieu of the original.

Q. This letter is entirely in your own handwriting?
A. Yes, sir; it is.
Q. Where were you when you wrote this letter?
A. Sitting in my parlor, on Bourbon street, receiving a visit from ex-Governor Hyams.
Q. Do you recollect the handwriting of your late husband, S. Duncan Linton?

Witness being shown letter, here marked "Complainant'- No. 2," offered on behalf of the Louisiana State Bank, states:

A. This is not Mr. Linton's writing.

Q. It is a letter addressed by S. Duncan Linton to the liquidating commissioners of the Louisiana State Bank?

A. Yes, sir.

Q. Now, I read it to you, as follows:

559 GENTLEMEN: In reference to a mortgage debt upon the Quantico plantation, in the parish of Rapides, which belongs to me, I will place before the board the following request in view of the great crash which has fallen upon us all. This mortgage is held in notes, eight of which belong to the bank, and three others which are in the hands of W. & D. Urquhart and Governor Wells, these gentlemen promising to abide by any decision the bank may make. I would ask time and that I should be allowed to cultivate my place unmolested, paying as much as I can pay every year until the debt is paid, or until I see that I cannot succeed in my undertaking. My negroes are petitioning my return to the plantation, and they are now only awaiting the issue of these troubles to go up there. Hoping that this may meet your approval, gentlemen, and that you may use clemency in the consideration of all things,

I am most respectfully yours,

STEPHEN DUNCAN LINTON.

New Orleans, October 28, 1865.

560 WITNESS: That letter is not in his handwriting. I wrote that letter myself.

Q. Where was Mr. Linton at the time you wrote this?

A. At the St. Charles Hotel. Upon the refusal of Urquhart to release the plantation, stating to me——

Note by Mr. McConnell.—Witness now proceeds to make a statement not asked *of* by counsel.

By Mr. FARRAR: You have the right to state the circumstances connected with the writing of this letter. Did you write this letter by request?

A. No, sir; by protess.

Q. How did you come to sign his name?

A. I took it upon myself, because I had the advice of Governor Hyams and Hickey Morgan in Mr. Morgan's office, the present minister to Mexico. I told my husband and he would not write. He said it was unwise; that something might grow out of it, and Mr. Hyams said to me to sit down and talk over it. Then they said what I should write and I went and wrote it.

Q. Mr. Morgan was your counsel?

561 A. I don't think he was counsel at all at that time. I think it was in a friendly way. I think he assumed the position of counsel afterwards.

Q. Did you not know that he represented Mr. Linton under a power of attorney?

A. I did not know it at that time.

Mr. McConnell, on behalf of the State National Bank, offers in evidence the letter marked "Complainant'- No. 2."

Q. Will you state the circumstances under which this letter of October 28, 1865, was written to the liquidating commissioners of the bank?

A. I went to see Urquhart to ask him to release the plantation, and he told me he had nothing to do with it.

Mr. McConnell objects to the above as hearsay on the grounds already stated.

WITNESS, continuing: All power having passed out of his hands, except the mere fact of bringing the suit for the bank, and he advised me to go to the bank. Then the next day Mr. Hyams called into the office of Hickey Morgan, where I was sitting, and
562 requested an interview, which was had at the office, and the two gentlemen agreed that I should write a letter like that, which I did.

Q. What was your husband's condition of mind? How long afterwards was he interdicted?

A. He was interdicted in February, 1865; over a year before that. In 1865, in February, that letter was written, and he was interdicted in 1866.

Q. What was his condition of mind at that time?

A. He was incensed and in a very bad state of mind.

Q. It caused a rise in his mental deficiency?

A. I think so.

Q. Did the condition of your husband'- mind have anything to do with your writing this letter?

A. Yes, sir; of course; because he refused peremptorily. Anything I did was under his inspection. He wanted to go to Paris, and that is the reason these two gentlemen advised me.

It is agreed that a copy of the letter of September 7, 1865, be certified by the examiner in lieu of the original.

[On the margin in pencil:] McConnell has original.

563 United States Circuit Court, Fifth Circuit, District of Louisiana.

Mrs. MARIE P. EVANS *et al.*
vs.
DAVID URQUHART *et als.* } No. 7672.

Testimony resumed on behalf of complainants before F. A. Woolfley, examiner, this 26th day of December, 1882.

Present: J. R. Beckwith, Esq., for complainant; James McConnell and Thomas Gilmore, Esqrs., for defendants.

C. W. KILBOURN, a witness produced, sworn, and examined on behalf of the complainants, says:

By Mr. BECKWITH:

Q. What is your age?

A. I am sixty-two years old.

Q. Were you in any way connected with the army during the war?

A. Yes, sir.

Q. What army or command?

A. I came here with the first expedition that came to New Orleans under General Butler. I was adjutant of the Sixth Michigan Volunteers when I came here.

Q. What position did you hold?

564 A. Soon after my arrival here I was appointed by General Butler provost marshal of Baton Rouge, in the early spring of 1862, after the battle of Baton Rouge, on the 5th of August, 1862. Then I returned to the city of New Orleans on the 29th of August, 1862, and was appointed provost marshal of the city and parish of Orleans. I held that position for nearly two years. I was appointed in February, 1864, commissory of prisoners, acting chief of the detective-, Department of the Gulf, as assistant provest marshal general. I retained that position until about the first of October, 1864. I was then appointed commander of the camp of distribution, and retained that position until I was mustered out in July—either June or July, 1866, but I think it was June.

Q. What were your duties while provest marshal of the city and parish of Orleans?

A. I would hardly know how to state that, for there were so many of them. It was to grant all passes and permits to people leaving the city or to run any institution, such as coffee-houses or gambling-houses or hunting permits.

565 Q. Did your duties in any way lead you to the inspection of commodities arriving in the city of New Orleans by river?

A. All of them. That was one of the businesses. Myself or my officers, under my orders, inspected everything—passengers and baggage.

Q. What position did you occupy at the time of Banks' expedition that left and returned—the expedition to Shreveport in 1864?

A. I was then commissary of prisoners and acting chief of detectives of the Department of the Gulf, in the office of the provest marshal, under General Bowen.

Q. Did it come to your knowledge during any of this time that there was any cotton brought here from Red River or the vicinity of Alexandria?

A. We had at that time what would be termed special officers upon each boat that was plying on the Mississippi river, whose duty it was to report to the provest marshal's department, through me or through the chief of detectives, the cotton, sugar, hides, or any-

thing brought down from any section of the country or anywhere on the steamboats, and also the passengers.

566 Q. Did you at that time know of any lot of cotton coming down from Alexandria about the time of the retreat of General Banks in the Red River country?

A. There were several lots of cotton came down that I remember—large lots of cotton.

Q. Do you remember any consignment of cotton coming here with which J. Madison Wells claimed any connection?

A. I will have to prelude that. Previous to that time, I think—I cannot tell how long it was—there was an arrangement entered into, of which I knew, between Mr. Lapeyerre, president of La. State Bank——

Mr. McConnell objects to the above as hearsay.

WITNESS: Wher-by a gentleman by the name of Stevenson, who was afterwards to take a certain amount of money from the bank, belonging to that bank, and go and purchase cotton. I think the arrangement was made with General Banks that a certain percentage of that cotton or the proceeds of it was to be paid over to the Government. Mr. Stevenson returned here at one time, when

567 Colonel Hopkins, who is now dead (I was filling his place), was the regularly appointed chief of detectives—Mr. Stevenson returned here and was for one or two days under arrest. These facts, known to me, impressed upon my mind the event of a certain transaction that went on or was called for in my presence in the spring of 1864 or during the Red River expedition or about that time; and the boat having arrived and it having been reported by one of our detectives, whose name I now forget, but I think his name was Taylor, Mr. Bower, the provost marshal general, thinking perhaps it was some of the cotton belonging to the bank, sent for the president of the bank, Mr. Lapeyere, and he satisfied the General in my presence—as I was present at the interview—that the cotton was not purchased with any of the money belonging to that bank; that it was purchased with money that belonged to some other fund or purchased with some other fund different from that and hav-

568 ing nothing to do with this arrangement or agreement entered into between the commanding general and this bank, and he was set free. We had nothing more to do with it. If my memory serves me right, I think he stated that the cotton that came down was consigned to Mr. Charlie Weed or C. A. Weed & Co., whom I knew very well.

Q. Did you know anything of J. Madison Wells in connection with this cotton?

A. Not as an owner I don't know. I cannot say positively, but I think I would be better able to make a positive answer in relation to J. Madison Wells if I had some time to look at some records and papers that I have. I think, or my impression now is, that this cotton was represented by Mr. Lapeyere to have been brought here on a permit from J. Madison Wells.

Q. Do you know to whom the cotton was consigned?

A. I was told——

Mr. McConnell objects to the witness stating what he was told as being hearsay evidence. He must state only facts of his own knowledge.

569 Mr. Gilmore objects to the witness using the words "the cotton was represented."

WITNESS: My impression at the present time is that the cotton was consigned to C. A. Weed & Co.

Q. Was any of this information that you testified to having obtained given in presence of Mr. Lapeyerre, president of the Louisiana State Bank?

A. I was present when Mr. Lapeyere was there. I know it was with General Bowen, and General Banks was present at the time.

Q. Was Mr. Lapeyere present?

A. Yes, sir; he was present in the office, at the corner of Carondelet and Julia street-.

Q. Do you know who brought about that interview, whether it was Mr. Lapeyere or who?

A. I think Mr. Lapeyere was sent for from the office.

Q. Mr. Lapeyere was at that time acting as president or had some connection with the Louisiana State Bank?

A. Yes, sir; I knew him well, as well as I do any of you gentlemen present.

Q. Have you any recollection of about how much cotton there was in that lot?

A. I have not.

570 Q. Have you any recollection of any other cotton coming down to C. A. Weed & Co. during the time you held that relation to the military post here?

A. Yes, sir; there were several lots that came. There were a great deal of shippments of cotton and sugar that came to Mr. Weed.

Q. Do you know whether any of that cotton that the bank claimed to get under the Stevenson contract came to C. A. Weed & Co.?

A. I do not. I have no recollection of it.

Q. Do you know how that bank cotton was received here and who received it when it came?

A. I think it was received directly by the quartermaster. My impression is so.

Q. That was Holabird?

A. Yes, sir.

Mr. McConnell objects to the witness giving impressions. He must state facts. If he does not know facts he cannot give surmises.

Q. Do you know of any cotton shipments to C. A. Weed & Co. in which the bank claimed an interest other than what you testified about?

A. I do not.

Q. Do you think you would have known it if it had occurred?

A. Had it occurred within the months of April and May,
571 1864, I think I would, because I was then confined entirely to the office and was not out at all, as I had charge of the business there.

Q. Do you think you have in your poss'ion or within reach, so that you can get access to them, any writings, memoranda, or records that would more fully give the particulars with regard to this shipment of cotton and whether J. Madison Wells had any interest in it or not?

A. So far as to Wells having any interest in it I don't think that I have. I might be more specific in dates and amounts and particularizing things in relation to the shipment of cotton during the spring of 1864 if I had a little assistance in looking at some papers and records that I have.

Q. Are these records and memoranda where you can get at them?

A. They are a promiscuous lot that I have. I can within the next ten days find if there is anything.

Cross-examined by Mr. McConnell:

Q. You stated that you were present at an interview be-
572 tween General Bowen and Mr. Lapeyere?

A. Yes, sir.

Q. Was there one interview or two, or how many?

A. One that I remember.

Q. Only one?

A. Only one that I remember at the present time in relation to a lot of cotton; the one I have spoken of.

Q. In what year and month did that interview take place?

A. Some time during the month of May, 1864. I know it could not have been otherwise. That was the time. I was in the office of General Bowen.

Q. You are certain, then, it was in the month of May, 1864?

A. Yes, sir.

Q. You are certain you could not be mistaken as to the date?

A. Yes, sir.

Q. You have said that Mr. Lapeyree was president of the Louisiana State Bank.

A. He was connected with it.

Q. You say he was connected with it?

A. He was connected with it, from the fact that I had often drawn money from time to time, and I had checks on him from Mr. Pike when I was in Baton Rouge.

573 Q. Do you know whether Mr. Lapeyrre was president of the Louisiana State Bank in the month of April or May, 1864?

A. I don't know. I don't know that such a bank existed.

Q. You stated in your testimony-in-chief that you knew Mr. Lapeyrre as well as you knew any of us gentlemen?

A. Yes, sir.

Q. And therefore you thought he was connected with the Louisiana State Bank?

A. And also from the fact that I always saw him there.

Q. But you never examined the subject?

A. No, sir; I never saw his commission or anything that would lead me to say so, but I will state——

Mr. McConnell objects to any statement the witness is about to make, it not being responsive to any question that he has asked.

By Mr. GILMORE:

Q. Where was this conversation had?

A. It was in the office, at the corner of Carondelet and Julia streets.

Q. In what office?

A. In the office of General Bowen, No. 208 Carondelet St., the building adjoining or the corner building connected with
574 General Bowen's headquarters. That was also my office.

Q. Who was present?

A. I do not remember, except General Bowen and myself. I was acting as his aid. He had always called me in when he had any business to transact, and I heard all that was going on at that time.

Q. Who sent for Mr. Lapeyree?

A. I think General Bowen, or General Banks directing General Bowen to do it.

Q. Did you go for Mr. Lapeyrre?

A. No, sir; I did not do that kind of business.

Q. How do you know Mr. Lapeyrre was sent for?

A. I probably wrote the order or saw it. It was my business to issue such orders, by command of the major general or provost marshal general, asking him to please call.

Q. Where are these orders?

A. I don't know. I think they are on file.

Q. They were in writing?

A. Frequently, and they were frequently verbal.

Q. But you have no recollection of having done anything of the kind?

A. I did not do it. My recollection is that I was present in the office.

Q. You happened to be present when Mr. Lapeyrre was
575 sent for and came to that office?

A. Yes, sir; I was there. It was the portion of the building where I had my office.

Q. Where was Mr. Lapeyrre sent for—to what place?

A. I cannot say what place.

Q. Was he sent for that day or not?

A. I think he was. All I know positively is that he came there for that purpose, and this conversation was in my presence.

Q. Came for what purpose?

A. For the purpose of explaining about a portion of this cotton that was purchased with the money that General Banks made the contract for, of which the Government was to receive one-third of the proceeds, they thinking it was cotton purchased with the money

of that bank, and they wished to know positively whether it was or not, and he coming there satisfied the provost marshal general, or whoever had charge of it, that it was not, and with that he went away. I have reason to know these things.

Q. Then the object of sending for him was to know whether the Government had interest in the cotton?

A. Exactly so—whether it was purchased with the money
576 of the bank upon which they promised to give the Government a certain *pro rata* on that cotton.

Q. Why was Mr. Lapeyere sent for?

A. Representing the bank, I presume, he being at the head of the bank.

By Mr. McConnell:

Q. You say you presume he was sent for because he represented or was the head of the bank. What do you know of the circumstance?

A. I know that he came there and it was understood, in 1862, in the fall——

Mr. McConnell objects to the voluntary statement the witnes- is proceeding to make as not being responsive to any question asked.

Q. Was there any note sent to Mr. Lapeyere, addressed to him as president of the bank?

A. I don't know; I did not write it.

Q. Was there any note addressed to him as president of the bank?

A. I don't know.

Q. Why, then, do you say that he came there representing the bank?

A. From the conversation that occur-ed there in my presence.

Q. And that conversation was to know whether the bank had any interest in that cotton?

577 A. Yes, sir.

Q. That was all the conversation?

A. That was all. He satisfied them—he told them no that it had not.

By Mr. Beckwith, for complainants:

Q. What do you mean by saying that the bank had no interest in that cotton—that it was not the contract cotton?

A. It was not the cotton that was purchased with the money that was taken out belonging to the bank, which they were to pay over to the United States, a portion of, with the permit, General Banks agreeing to give all facilities, and those connected with the bank were to bring in all this cotton, and a portion was to go to the Government.

Q. You were about to make a statement when the counsel on the other side objected that you should only state of your own knowledge of Mr. Lapeyre's connection with the Louisiana State Bank. Now make that statement.

A. After my appointment as provost marshal, in 1862, by General

Butler, I was authorized or directed by him to examine and
578 enquire into the condition of the banks of the city of New Orleans, he appointing experts who were to act under my direction as provost marshal. I then learned who represented themselves as the heads of the various banks that I visited. At that time Mr. Lapyrre was the man that represented that bank.

Q. It was a matter of general notoriety here, also?

A. Yes, sir.

(Signed) C. W. KILLBORN.

Sworn and subscribed before me Dec. 26, 1882.

F. A. WOOLFLEY, *Examiner.*

The examination here adjourned until Thursday, December 28, 1882, at three o'clock p. m.

579 MARIE P. EVANS *et al.* *vs.* DAVID URQUHART *et als.* } No. 7672.

NEW ORLEANS, *Dec. 28th*, 1882.

Testimony on behalf of complainants resumed this day at 3 o'clock p. m., as per adjournment.

Present: J. R. Beckwith, Esq., for complainant-; James McConnell and Thomas Gilmore, Esqr., for defendants.

JAMES E. ZUNTZ, a witness produced and sworn and examined on behalf of complainants, says:

By Mr. BECKWITH:

Q. Where were you in the spring of 1864?

A. I was here in New Orleans.

Q. Did you know of Mr. Lapeyers?

A. Yes, sir.

Q. What relation, if any, did he have at that time to the Louisiana State Bank?

A. President, if I remember right.

Q. Did you know John A. Stevenson?

A. Yes, sir.

Q. What relation, if any, did he hold to the Louisiana State Bank?

580 A. He was a director in it. I don't know whether he was a director in 1864 or not, but he was a director and went out. Then he was the agent of the bank.

Q. He had something to do, had he not, with the gathering in of the cotton that was purchased with the Confederate money sent out?

A. Mr. Green was the principal man at that time.

Q. Stevenson had something to do with it, had he not?

A. Yes, sir; he had.

Q. Did you, about the month of March, 1864, or any time during

the early part of 1864, enter into any agreement with Stevenson as the agent of that bank?

A. Well, I cannot state exactly the date. I can state it easily if you let me see my papers. I have got the written agreement, but I don't remember the date. I think it was before 1864.

Q. Have you got the original of that paper?

A. Yes, sir.

Q. Will you let us have a copy of it?

A. I will looan it to you at anytime. There was an agreement in this way.

581 Q. Here is a printed copy of it.

A. Well, I will look at it. Yes; this is a copy.

Q. Have you the original of this copy?

A. Yes, sir; I have the original in my possession now.

Q. Will you let us have a copy of it?

A. I will loan it to you, gentlemen.

Q. Did your transactions with Stevenson or with the bank through Stevenson relate entirely to this class of cotton named in the contract?

A. I will tell you how I came to be connected in this business, just to show you how this thing started—this cotton business—when I got into it. Stevenson was in *hopperty*. At first he could not be found, but was afterwards, and his wife came to me to get him out. I was then living on the plantation.

Q. Did your transaction with Stevenson, or with the bank through Stevenson, relate entirely to this class of cotton named in the contract?

A. Yes, sir. Let me interrupt you. The receipt for all that cotton is somewhere. Either Judge Campbell has got all the

582 receipts of that cotton coming to the Confederacy or with Thomas Hunton. I handed him all the receipts for the cotton that the Confederacy owned. These receipts were in a very large package, and I either let Judge Campbell have them or showed them to him. I loaned them to Mr. Hunton, and Mr. Hunton said he could not find them after I asked them from him, and Judge Campbell said he could not find them. They showed the amount and of whom the cotton was bought in the Confederacy. If you take the trouble to find them you can find out this. Stevenson, when he was arrested and went out, gave them over to me. He said, "I want you to be benefitted; to take the contract in my name and represent him—to be partners"—and the cotton was sold to Griff, Weed, and myself, at so much a pound. I was to represent Mr. Stevenson in the transaction which we happened to have, between him and myself—that is, buying cotton from the bank.

583 Q. This cotton was most, if not all, of it up the Ouachita river or near Monroe?

A. It was all that section of country—the Ouachita, Monroe, and Alexandria. This contract will show.

Q. Do you know of any cotton grown on the plantation of Stephen Duncan Linton, in the vicinity of Alexandria?

A. Well, I don't know any more than what I heard.

Q. Was any of that cotton included in this contract?

A. That I cannot say. That is the reason, if you get these receipts they will show. I would not be positive as to that. There was more cotton that I claimed and got, but I don't think it was that. I think the Linton cotton was shipped here separate. After the fall of Red River Mr. Wells came in here and brought in lots of cotton, so did Mr. Bailey. I went on the bond for Bailey here in his case. I think it was for this cotton brought down, but the records will show what it was for. I do not swear to this exactly because it —
too long to remember, but there was something of that mixed up with it; what it was I don't know.

584 Q. How was this cotton that was effected by the Stevenson contract consigned—that portion that came to New Orleans?

A. After the fall of Alexandria, Stevenson, after he went out, went up to Red River with General Holabird to Alexandria. Holabird got him through the lines and he went to Shreveport; then he wrote to me that the contract between him and myself was changed and I need not think to carry it out. There is a letter here of record in this court stating that he threw up the contract, and if I wanted to make anything out of it to come to Shreveport.

Q. Was any of the cotton effected by that contract ever sent to the city of New Orleans?

A. A great deal of it.

Q. Now, I ask you if you remember to whom that cotton was consigned.

A. In changing the contract with me he wrote to me; but before he did make that change there was a great deal of the cotton sent to Weed—Weed and McKee, I think it was then, and I don't know whether it was changed to C. A. Weed & Co. There was a

585 great deal of cotton sent from Alexandria to C. A. Weed & Co. by Bailey & Wells. There were two lots of cotton that came out of the Ouachita. One of eleven hundred bales came from the Ouachita and this man Mansfield got it.

Q. What I want to know is how this bank cotton, as I designate it, was consigned—who received it here in New Orleans?

A. The bank cotton—there was a large quantity of cotton come from Red River, Shreveport, and different points there that was consigned to Pike, Lapeyrré, but I would not be positive. I think there was a great deal of cotton consigned to them.

Q. Was there any cotton consigned here under the agreement that you had?

A. My interest was null. It came here, but I did not get any interest in it. I did not get the money that I spent.

Q. After this contract was annulled, as far as Shreveport was concerned, you did not get the benefit of it at all?

A. No, sir.

Q. Do you remember of having gone to the office of Weed or Weed, Withers & Co. to make any enquiries about the Alexandria or Linton cotton?

A. I went there often to enquire about this cotton, as I —

586 well informed about that.

Q. Did you ever claim any interest in that cotton shipped down by Wells?

A. I don't know whether I did or not. I have no recollection of it.

Q. Do you remember whether any inquiry was instituted by Lapeyrre or Weed, Withers & Co. as to whether this Alexandria cotton was cotton purchased with Confederate money sent out by the bank?

A. I have forgotten about that. It appears to me there was something about it, but I don't remember the facts. I enquired a great deal about this cotton and was going to claim it, but Griffin, who was out to buy this cotton, appeared to have the strongest friends and I let it alone. I went and claimed the cotton for the bank that was on this boat—eleven hundred bales—and there was a great stir about it and I did not go any further. Then Mr. Stevenson wrote to me that I need not look for any interest in the cotton that he shipped, that he had exchanged the Red River cotton for the Ouachita cotton.

587 Q. So that you really never got any benefit from that contract?

A. No, sir; Mr. Pike and Laypeyrre got all the benefit. The cotton was shipped to them and they made a great deal of money out of it.

Q. Do you remember ever having gone to the office of the Louisiana State Bank with any of the firm of Weed, Withers & Co. to make inquiries about this Alexandria cotton?

A. I do not recollect distinctly; I think I did. I know I went to the State Bank several times; at one time after Mr. Blunce got into it. There was trouble about that. Mr. Stevenson got back at the time and I know there was some misunderstanding about it. I advanced thirty-three hundred dollars, which I never have got back to the present day. There was so much of it then that I don't remember it now. There was something of that kind, but I don't remember it now.

Q. Do you remember to have seen any of the Linton cotton,

587½ either in transit or here?

A. There was something about the Linton cotton, but what it was I don't know; there was a great deal of talk about it. I think if you ask Mr. Grant he will tell you.

Q. Were you up at Alexandria at the time of the retreat?

A. No, sir; I never was there in my life.

Q. You did not go up the river during the time of the expedition?

A. No, sir; I did not; I never left the office.

Q. Did you have any cotton of your own, or of which you ultimately got control, consigned to C. A. Weed & Co., or to Weed, Withers & Co.?

A. No, sir; I was not interested in cotton in any way until after the close of the war.

Cross-examined by Mr. GILMORE:

Q. When you say that Pike and Lapyrre got the benefit of the cotton what cotton do you mean?

588 A. I presume it was the bank cotton, if I remember right, because it was shipped by Mr. Stevenson. I think it was the bank cotton.

Q. The cotton which Stevenson had bought?

A. Which Stevenson had bought for the bank.

Q. Were they the consignees of the cotton?

A. I think so; I don't remember right, but I think so.

Q. Do you not know that their business was a banking business?

A. Well, I think when they first went in they were consignees of cotton.

Q. Do you remember any consignment of cotton to them?

A. I think pretty much all was consigned to them, or a great deal of it. I am certain of that, although a man's mind is pretty hard to trust after twenty years.

Q. Who represented the Louisiana State Bank at that time?

A. Mr. Lapeyrre, I think. A large amount of cotton came to Pike and Lapeyrre, although I would not be certain. It strikes me so. I know I went to the bank there.

Q. Do you remember any particular consignment or any particular boat that brought the cotton?

589 A. No, sir; I don't remember any particular one. There was a lot of cotton came down here and I think that was consigned either to the bank or to Mr. Lapeyrre. I went on a bond to Mr. Flanders, who was the cotton receiver, for Mr. Stevenson.

Q. These things are matters of record?

A. Yes, sir; that is why I tell you. You can find out looking through the receipts for the cotton.

Q. You never saw any of the cotton yourself?

A. I told you I saw these eleven hundred bales.

Q. But I am speaking of the actual cotton in bales that came down.

A. I don't know, but I think I saw some of them. I am positive I saw some of them. I am certain I did—two or three lots that were brought down from the bank. There were several lots brought here before the bank got any cotton.

Q. You don't remember any particular consignment to Pike and Lapeyerre?

A. No, sir.

590 Q. Was not the firm Pike, Lapeyrre and Brother?

A. No, sir; not at that time. I think it was Pike and Lapeyrre, but I am not positive. They were advancing money on this cotton coming here. This was the situation when Mr. Stevenson would get the cotton through and there was no difficulty about it. It would be for speculators—Pike, Lapeyrre, or Mayor Stevenson; but if there was to be any litigation it would be as bank cotton. Stevenson shipped some cotton to England himself. When there was no chance of litigation it would be his cotton, but when

there was trouble about it it was the bank's cotton. This cotton was in the hands of a couple of men, who made their fortunes out of it.

Q. It would be impossible for you at this distance of time to state any particular fact with reference to any particular lot of cotton?

A. Yes, sir; impossible. I am only telling you as far as I know. I know these circumstances happened, because I was interested myself and lost money.

591 Q. You had an interest, in the way in which you say, with Stevenson in the cotton which Stevenson bought for the Louisiana State Bank outside?

A. Yes, sir.

Q. You had no other interest?

A. No, sir.

Q. You had no connection with any cotton, such as Stevenson had?

A. No, sir; I had no connection with anything except the bank cotton.

Q. But I suppose you would have no knowledge of any other cotton?

A. Well, I have forgotten. I had the run of almost all these transactions.

By Mr. McConnell:

Q. Was not there a great deal of cotton shipped into the city at about the time you speak of when the bank cotton came in—that is, was not there a great deal of cotton shipped into the city to other individuals and by them shipped to Europe?

A. Yes, sir; it came to other parties.

Q. And disposed of by them?

A. Yes, sir.

Q. It came from Red River and other places?

592 A. Yes, sir.

Q. At this same time different cottons came in?

A. Some of this cotton came here first and nobody got any of it except C. A. Weed, Wells, and Bailey. That was after the fall of Alexandria, when Banks went up there.

Q. What year was that that Bailey and Wells got any cotton here?

A. In 1864, after the fall of Alexandria.

Q. It was after Stevenson went out to get the cotton for the bank?

A. No, sir; he was out there.

Q. But before the cotton came in for the bank?

A. Stevenson had got out. I cannot tell you positively. It strikes me it was either before Banks went to Alexandria. I think this cotton came down before he got to Shreveport. I think Wells and Bailey's cotton got here before he got to Red River. I could tell that easily by looking over the books, because I went on the bond.

Q. John A. Stevenson went out to purchase cotton for the bank?

A. He went out twice.

593 Q. He went out to purchase cotton for the bank?

A. Yes, sir.

Q. Did he not send the cotton in here for his own individual account?

A. Yes, sir, largely.

Q. How many thousand bales would you say?

A. I cannot say; but very largely.

Q. From Red River?

A. Yes, sir.

Q. From the neighborhood of Alexandria?

A. No, sir; from Shreveport, I think—he done his business at Shreveport.

Q. But you don't know whether he sent the cotton from other points on the Red River for his own account?

A. No, sir.

Q. But he shipped very largely for his own account?

A. Yes, sir.

Q. When there was trouble about it it was represented as the cotton of the bank?

A. Yes, sir.

Q. And when there was no trouble it slipped through as the cotton of Stevenson?

A. Yes, sir; I don't know that to be the fact, but it was said to be so.

Q. Was not the reason for that because the bank had the
594 permission of the United States to send out and purchase cotton, and when there was trouble it was said to be the bank cotton, because the bank had such permission?

A. Yes, sir.

Q. But when it came in, and there was no trouble, they put it in their own names?

A. Yes, sir.

Q. It came from Red River, too?

A. Yes, sir.

Q. How many thousand bales did Stevenson get in in that way?

A. I cannot say; but a great deal.

Q. Would it not amount to thousands of bales?

A. I think so.

Q. Do you know when Mr. Lapeyere ceased to be president of the Louisiana State Bank?

A. No, sir; I don't remember the date.

Re-examined by Mr. BECKWITH:

Q. At the time you speak of, that Stevenson was getting in cotton on his own account, was later on, towards the close of the war?

A. Well, they could not get it in before. When we got cotton in it was after the fall of Red River.

595 Q. You mean after the general surrender?

A. Yes, sir.

Q. Banks' expedition never got further than Grand Ecore?

A. That is all. They did not get cotton until after the fall of Red River, except Wells' and Bailey's from Alexandria. They got

the Government transports to get it in; and also Mr. Henry Laurence got in cotton before the surrender.

Q. That is, cotton from the lower portions of Red River?

A. Yes, sir.

Q. But this Shreveport cotton did not get in until after the surrender?

A. No, sir; it could not.

By Mr. McConnell:

Q. You speak of cotton that came here for Wells, Bailey, and Laurence?

A. Yes, sir.

Q. In what year or month did that cotton arrive here that came to Wells and Bailey?

A. I cannot say unless I get the records. The records of the court here will show that.

596 Q. Did that cotton that came here for Wells and Bailey come before or after the fall of Alexandria by Banks?

A. I think not. I think it came after the fall of Alexandria by Banks.

Q. How long after the taking of Alexandria by Banks?

A. Very soon after. I cannot say about the dates, but I think this cotton came before Red River was open.

Q. What interval of time was there between the time Stevenson commenced shipping cotton and the Wells and Bailey cotton came here?

A. Well, it must have been some time.

Q. How long?

A. I cannot say. You cannot expect me to remember nineteen years.

Q. All you know is that one came after the other?

A. Yes, sir.

Q. Can you tell me about how long after the other?

A. No, sir; unless I made enquir-es and hunted it up.

Q. When you speak of the Wells and Bailey cotton coming here, what quantity came here for Wells and what for Bailey?

597 A. Bailey was supposed at that time to get in three or four hundred thousand, and I think Wells swore to a bond here for two or three hundred thousand himself.

Q. Whereabouts did he swear to that bond?

A. In the custom-house.

Q. Where can I find it?

A. I think in the case of Bailey.

Q. Is that where Wells had an interest?

A. That is where Bailey was sued.

Q. I want to know whether Wells had an interest in the cotton.

A. He had no interest in that.

Q. I understood you to say there was some bond in this building—in this court—which would show something about the cotton which Wells got.

A. At the time he got his, to make him have property and swear how much he was worth, he got cotton and sold it.

Q. In justifying as surety on Bailey's bond he swore how much he was worth?

A. Yes, sir.

598 Q. But he did not swear how much cotton he was worth or where he got the cotton from?

A. No, sir.

Q. My question still is, how many bales of cotton came in for Bailey and how many came in for Wells?

A. I cannot say, but I can tell you.

Q. I wish you would.

A. By getting C. A. Weed's books. There was some fighting about it at that time; or if you can find Mr. Weed's book-keeper you could find out. He can tell you in a short time. All I know about these transactions *are* is that trouble commenced between Weed and Bailey and some between Wells about a settlement. They both of them had large amounts of cotton. I did not keep the books of these persons' business.

Q. Who had the trouble with Wells about the settlement of his cotton?

A. I don't know whether C. A. Weed had trouble with him or not, but I think there was some trouble with Weed and McKee and Wells, but I know there was trouble with Baily.

Q. But about Wells—what was the trouble with him?

599 A. I think with Weed, and I think with McKee.

Q. Who was McKee?

A. A partner of Weed.

Q. What McKee was that?

A. John H. McKee.

Q. Did he hold office under the United States Government?

A. He was United States marshal afterwards.

Q. Did he have any interest in the cotton?

A. In the cotton that came to Weed's?

Q. Any cotton that came to Weed for Wells, was he interested in that cotton?

A. Yes, sir.

Q. And Weed and Wells had a difficulty about it?

A. Yes, sir.

By Mr. BECKWITH:

Q. You mean he was interested as one of the partners of Weed?

A. Yes, sir; they advanced the money and used their influence in getting it here.

By McCONNELL:

Q. How was Weed interested in the cotton that came here for Wells?

A. I cannot say. McKee was the cousin of a person at
599*a* Alexandria that married Wells' daughter. He went up the lines with the maid and made the transaction about this cot-

ton. After the fall of Alexandria the cotton was shipped by this man Andrew McKee.

By Mr. GILMORE:

Q. Andrew McKee had married Wells' daughter?
A. Yes, sir.
Q. And he was the cousin of John H. McKee?
A. Yes, sir.
Q. Then both were interested in the Bailey and Wells' shipments?
A. Yes, sir.

By Mr. BECKWITH:

Q. But you do not mean to say they were interested in Wells' shipments?
A. I don't know. The only thing I know was, they sold the cotton. This man Hall's books will tell better than I can.

599b RICHARD H. HALL, a witness recalled and examined for complainants, says:

By Mr. BECKWITH:

Q. When you were examined before you were asked to examine some data that you refer-ed to; have you done so?
A. Yes, sir; I have.
Q. With what results?
A. I have a memorandum in my pocket. I have examined the books at the State Library, and find there was a thousand and six bales and three hundred and seventeen sacks of cotton turned over to C. A. Weed & Co. about May 4, 1864, by Mr. Holabird, the quartermaster.
Q. How does that accord with your recollection of the amount?
A. It accords very closely with it.
Q. When you were examined before you testified to a visit to the office of the Louisiana State Bank during the time you were bookkeeper of Mr. Weed. Have you any further recollection now upon the subject as to what that interview related to?
599c A. After refreshing my memory, I have come to the conclusion that it must have been in Mr. Zuntz' interest, and also cotton in the hands of C. A. Weed & Co., received from Alexandria, for account of J. Madison Wells.
Q. Mr. James E. Zuntz was with you at the time when you called at the bank?
A. Yes, sir; he was with me.
Q. Do you remember who you saw at the bank?
A. Mr. J. M. Lapeyere, the president.
Q. Was that before or after the check had been given for the proceeds of the sale?
A. That was prior.
Q. What is the best of your recollection about that interview—what occur-ed; to what did it relate?
A. I cannot say distinctly what it related to unless it was in the

interest or in connection with this cotton that Zuntz pretended to be interested in.

Q. Do you remember at whose instigation you were sent there?

A. Mr. James E. Zuntz.

Q. Do you remember whether any result came from the interview or not?

A. Not to my knowledge.

599*d* Q. About how long afterwards was it that you drew this check representing the net proceeds of the sale of that cotton?

A. I have no particular recollection of the date of the check.

Q. About how long after this visit to the bank was the final settlement made?

A. It was after the sale of this cotton. I cannot recollect exactly the time; it might have been a month afterwards.

Q. Do you know where J. H. McKee is now—whether he is alive or dead?

A. I do not know that he is dead. I heard he was dead at one time, and since that time parties stated positively to me that he was not dead. I know nothing of my own knowledge.

Cross-examined by Mr. McCONNELL:

Q. What was the year and month that you went to the bank with Mr. Zuntz, when you saw Mr, Lapeyere, as you say?

A. In the spring of 1864.

Q. What month?

A. I forget exactly what month it was; it is some time ago now.

599*e* Q. How do you know it was the spring of 1864?

A. Well, I recollect very well the circumstances; it was in the spring of 1864, I recollect that.

Q. Can you fix upon the one, two, or three months it was; which of the spring months of that year was it?

A. It may have been in May.

Q. But can you fix which one of the three months it was?

A. Not positively; I cannot. It was about the time this cotton was received; it may have been April or May.

Q. What had Mr. Zuntz to do with that cotton that you are talking about? You said you went with Mr. Zuntz, and that Mr. Zuntz was interested in that cotton,

A. I understood that he had a written contract with the bank.

Q. Have you any personal knowledge about that?

A. Except that I read his contract—I read a copy of the contract.

Q. Who were the parties to that contract you read?

A. Mr. Lapeyere, James E. Zuntz, and A. D. Griff.

Q. What was the date of that contract?

A. Some time about the 28th of March, I think it was.

599*f* Q. Of what year?

A. I forget what year. I have a copy it in my pocket.

Q. How do you recollect the 28th of March if you cannot recollect the year?

A. It may have been 1864. I remember the 28th of March distinctly; I believe it was in 1864.

Q. And you went around with Mr. Zuntz to see whether that cotton had anything to do with that contract?

A. I went with Mr. Zuntz to see what could be done in his interest.

Q. You did nothing?

A. I don't remember what the result was.

Q. There was not anything accomplished in the interest of Mr. Zuntz?

A. Not that I am aware of.

Q. You gave the check to Mr. J. Madison Wells?

A. Yes, sir; it was handed to Mr. Weed.

Q. You drew the check?

A. Yes, sir.

Q. Did Wells get the money for the cotton?

A. Yes, sir; to the best of my knowledge. I cannot say
599*g* that he got it alone. I know the check was handed in to Mr. Weed's office for the balance of the proceeds.

(Signed) RICH'D H. HALL.

Sworn and subscribed before me Dec. 28, 1882.

F. A. WOOLFLEY, *Examiner.*

The examination was here adjourned to Saturday, December 30, 1882, at 10 o'clock a. m.

DEC. 30TH, 1882.

Met and adjourned to January 18, 1883.—W.

599*h* United States Circuit Court, Fifth Circuit, District of Louisiana.

Mrs. MARIE P. EVANS
vs.
DAVID URGUHART. } No. 7672.

Testimony resumed on behalf of complainant- before F. A. Woolfley, special examiner, this 18th day of January, 1883.

Present: James R. Beckwith, Esq., for the complainants; James McConnell and Thomas Gilmore, Esqrs., for defendants.

ANGELO V. WARD, a witness produced, sworn, and examined on behalf of complainant-, says:

By Mr. BECKWITH:

Q. What is your age?

A. About forty.

Q. What were you during the years of 1863 and 1864?

A. I was in New Orleans.

Q. What was your occupation at that time?

A. A United States Government detective.

Q. To whose department were you attached?

599*i* A. To the provost marshal general's department.

Q. Of the Department of the Gulf?

A. Yes, sir.

Q. Who was provost marshal general at the time?

A. At that time Killborn was provost marshal of the parish, and I am not certain whether it was Bowen or Robinson was provost marshal*l* general. I was under all of them.

Q. Were you in the city of New Orleans in April, May, and June, 1864?

A. I was.

Q. Were you in the city of New Orleans when the transports came back from Banks' Red River expedition?

A. Yes, sir; I was.

Q. Did you see the transports on their return?

A. Yes, sir; I did. I saw some of them.

Q. What were they laden with—what did they bring down?

A. They brought cotton, both in bags and bales—cotton torn all to pieces and tied up the best way possible, and sugar.

599*j* Q. Did you have anything to do with investigating the character of the cotton that arrived here—the ownership of it?

A. Well, yes, sir; it was one of the duties connected with my department.

Q. To whom did you report the arrival of cotton that you thought need- investigation?

A. To the provost marshal of the parish—to Mr. Killborn, I believe—at that time.

Q. Did you know J. Madison Wells?

A. I did.

Q. Do you know of his having any connection with any of the cotton that came down there?

A. Yes, sir. I will qualify that in order to answer the question. I will have to refer to another matter in order to get at that.

As a detective I had a great many parties giving me information. I received information that J. Madison Wells was bringing cotton to New Orleans—that was Confederate cotton—on a permit which he had obtained; how I don't know. I reported that fact to the provost marshal. That is the only way I can answer that question.

Q. What was done upon the report?

599*k* A. I was instructed by the provost marshal*l* to bring up Mr. Lapeyere. I think he was connected with the bank here.

Q. Where did you find him?

A. I found him on Royal street, corner of Conti, in the bank.

Q. What message did you carry to him?

A. I told him he was requested to appear at the provost marshal's office, and I was requested to bring him.

Q. Did you carry him there?

A. I did. There were several gentlemen there. He asked me if he was under arrest, and I told him it was a question I could not answer.

Q. Did he go to the provost marshal's office with you?

A. Yes, sir; he did.

Q. What occur-ed there?

A. It was some time before an interview could be had with the provost marshal on account of other business. Finally I went into the office and told the provost marshal that there was Mr. Lapeyere. If my memory serves me right the provost marshal asked him about about this cotton that came down the river, supposing
599*l* it to be John A. Stevenson's, who had a contract to bring in cotton, which the Government had an interest in to a certain extent, and he said no; it was cotton that he got a permit to bring in. It was Madison Wells' cotton, which the bank had a lien upon; to what extent, of course, I cannot say.

Mr. McConnell, for defendant The State National Bank, objects to the answers of the witness as to the report of the conversations out of the presence of parties for whom the bank is responsible; that it is a conversation between third parties.

Q. How long did this interview last after you got to the provost marshal's?

A. I think it lasted, probably, not more than ten or twenty minutes; not any longer.

Q. What was the result?

A. I was requested to let him go.

Q. Was it done?

A. Yes, sir; he departed.

Q. Do you know to what particular cotton or to what particular vessels this cotton was that was refer-ed to?

A. Well, the cotton that I reported was on the Polar Star
599*m* and one or two other boats. I have almost forgotten their names now. I think the Madison was one.

Q. Was there anything more done about that cotton?

A. I don't think the Government ever touched it at all, to my knowledge.

Q. That was the last you heard of it?

A. Yes, sir; the last, of my knowledge, about that cotton.

Q. Do you know why Mr. Lapeyere was sent for? You say it was because it was supposed to be Stevenson's cotton.

A. Yes, sir.

Q. Do you remember about what time in 1864 this was?

A. Well, I think it may be about the month of May. I think it was somewhere near the middle of May.

Q. Do you remember whether it was before or after Banks' expedition up the Red River?

A. I think it was after it.

Q. I mean when they tried to get to Shreveport.

A. I think it was after.

Q. Have you stated all you recollect of what Mr. Lapeyere said in the provost marshal's office?

599*n* A. I think, to the best of my knowledge, I have. There might have been a few words that I did not catch. I was very close to the parties sitting at the table. It is a long time ago.

Cross-examined by Mr. McConnell:

Q. Who was provest marshal when this conversation took place?

A. I took him before, I think, C. W. Killborn. I am almost positive it was C. W. Killborn. I have not seen him for many years.

Q. He was provest marshal?

A. Yes, sir.

Q. It was in his presence that the conversation took place?

A. Yes, sir.

Q. Where was the office in this city?

A. At the corner of Conrondelet and Perdido streets. It was removed from 177 Canal street to the corner of Conrondelet and Perdido street-.

Q. Do you know when J. Madison Wells was acting in New Orleans as Governer of the State?

A. I recollect when he was acting Governor.

599o Q. Was this conversation before or after that time when Wells was acting Governor in the city hall here?

A. I would not like to answer that question, because I cannot.

Q. How long was Wells acting Governor in the city hall? How long a period of time was he acting Governor?

A. I cannot answer that.

Q. Well, about how long do you remember that he was acting?

A. He was acting for over a year, probably.

Q. He was here in the city?

A. Yes, sir.

Q. Cannot you tell about how long it was from this conversation—whether it was before or after this conversation—that Laypeyre had with the provest marshal as you detailed?

A. No, sir; I cannot. The business I was in I had very little to do with J. Madison Wells, and consequently we rarely met.

Q. You were a detective. Your business was to bring people up before the provest marshal very frequently?

A. Very often.

Q. Sometimes quite a number in one day.

599p A. Yes, sir; and without warrant, and sometimes I would bring them in and not know what they were there for.

Q. During what time were you a detective in this city?

A. From the first occupation of the military and through it to the close of the military occupation. I was under every provest marshal from the beginning to the end.

Q. And that was the only time you had Mr. Lapeyre up before the prosvest marshal?

A. Yes, sir.

Q. How many persons do you suppose, altogether, you ever had up before the provest marshal?

A. It is almost impossible for me to answer that. I might say five hundred, probably, and be correct. I had some of the oldest and best citizens in the city.

Q. Your business was to bring them up there?

A. Yes, sir.

Q. And it was the provost marshal's business to deal with them after they were brought there?

599q A. Yes, sir; I often made the charges myself, and the provost marshal would commit them.

Q. But you did not make charges in Mr. Lapeyre'- case?

A. No, sir.

Q. You merely went to bring him there?

A. Yes, sir.

Q. You had no professional business except to bring him there?

A. After the provost marshal decided that he had no case I had not.

Q. Where is your residence now?

A. At English Lookout, St. Tammany parish, La. I am United States boarding officer.

By Mr. GILMORE:

Q. Have you recently had any conversation or conversations with any person with reference to this case; if so, with whom?

A. Yes, sir; I have.

Q. Give the names of the persons.

A. Mr. Bouchard I think the name of the person is.

Q. How many times did you have conversation with him?

599r A. I saw him twice during four years. I saw him the 2nd of last month in town accident-ly. Let me see. I don't suppose until last month I saw him for six years, because I was not in town within three years.

Q. He brought you here to testify?

A. You may say it was he. He asked me did I know anything about this, and I said yes, and if I was subpœnaed I would come here.

Q. When did that conversation occur?

A. The second or third of last month. It must have been the third, because I came in on the second.

Q. Did you tell him what you knew about the circumstances of the case?

A. I probably did.

Q. Had you any recent conversation with him?

A. Not on that case. I saw him to-day on the street, but I did not refer to this matter at all.

Q. But you have had a full conversation with him about the third of this month?

A. I think it was about the third.

Q. Did he send for you?

A. No, sir.

Q. Did anybody send for you?

A. No, sir; I came in on a leave of absence.

599s Q. Did you come on the intimation that you were wanted?

A. No, sir; I came in on my own private business this time. I told him if I was needed to give any assistance I would come in, but I came in on leave of absence.

Q. Do you remember the names of the boats other than the Madison and Polar Star that came in about the time that you speak of?

A. No, sir; but I could give you all the information you want if I was where my papers are.

Q. Do you remember how long Governor Wells was Governor of this State, and under whose administration?

A. He was under the administration of General Banks. I cannot say how long he acted.

Q. How long did he act?

A. I cannot answer that intelligently.

Q. How is it you remember these circumstances and do not remember how long Governor Wells was Governor of the State?

A. Because I was interested in seeing these things, and was
599*t* not interested in Governor Wells' department.

Q. Where you not interested in knowing who the Governor was?

A. Probably at that time I was not.

Q. Do you know whether he was appointed as Governor or elected as Governor?

A. My impression is Governor Hahn was elected and resigned, and he, being the lieutenant governor, came in.

Q. When the provest marshal sent you for Mr. Lapeyrre did he tell you what he wanted with him?

A. No, sir.

Q. Did you tell the provest marshal what you discovered about the cotton?

A. Yes, sir—that is, what he was brought up upon.

Q. What did you discover about the cotton?

A. I did not know what I did discover, but I did not know what an investigation would lead to.

Q. It was made for the purpose of bringing about an investigation?

A. Yes, sir.

600 Q. You knew nothing about the cotton?

A. Nothing except what I hea-d.

Q. To whom was the cotton consigned on these boats that came in about that time?

A. I cannot say positively.

Q. You don't know what quantity of cotton came in?

A. No, sir; there might be twelve or thirteen hundred bales. My information was — to more than what came in.

Q. Then the information which you received did not prove to be exactly true?

A. No, sir.

Q. You say it was reported to you as a detective?

A. Yes, sir.

Q. Who made that report to you?

A. I cannot say. As detectives we had men on all the boats—men that were employed.

Q. And you don't know the name of the person that made the report to you?

A. My impression is now that it was made by a man named Harry White, but I would not be positive.

Q. You don't know how many boats came in?

A. No, sir; but three or four.

601 Q. You think about thirteen hundred bales of cotton came in and was the whole amount?

A. That was the amount reported to me as Government cotton. My information did not go any further than where the parties were released.

Q. Who was present in conversation with the provost marshal when he was brought there?

A. My impression is there was nobody present but the provost marshal.

Q. That is Mr. Killborn?

A. Yes, sir; there may have been a clerk there, but I doubt it.

Q. You were there?

A. Yes, sir.

Q. You don't remember any other person present besides the clerk?

A. There was a person in the office that had his desk there, but I don't think he was present.

Q. Where were headquarters then?

A. At the corner of Julia & Carondelet street, No. 208, was the office of the provost marshal general.

Q. That was a different office from Killborn's?

A. Yes, sir.

602 By Mr. McConnell:

Q. You say that you had detectives on all the boats?

A. Men who acted in that capacity; men whom we would get information from.

Q. Every steamboat had a Government detective upon it?

A. No, sir; all Government detectives had men employed on the boats.

Q. I understood you to say that all boats had detectives on them, and when the boats came in they gave you the information?

A. No, sir; it did not come to me that way.

Q. What do you mean by the expression that all boats had detectives on them?

A. I mean that all boats had trustworthy men that we as detectives could rely upon, and when a boat would come in we would act upon their information.

Q. And every boat or almost every boat had one of them?

A. Yes, sir.

Q. They were trustworthy?

A. Well, they would rely upon them.

Q. The provost marshal relied upon me in my duties. I

603 had a way of doing it. There was a branch of the service where there were Government detectives on all boats.

Q. Had you the appointment of all detectives?

A. No, sir.

Q. Do you know whether any of these boats that came in from Red River had Gover-ments detective- on them or not; do you know it personally?

A. No, sir; I do not. When I say Government de-ctives I mean men duly commissioned.

Q. Do you know perso-ally that any of these boats had detectives of any kind on them?

A. No, sir; I do not. I know I had my own men on them, but they were not detectives. I paid them myself and they gave me any information relative to the Government.

Q. You had detectives on all these boats on the expedition up Red River having the cotton that you have described? I am speaking of no other boats.

A. No, sir: I did not have them on all; I had friends; and if they had any information I would have got it.

604 Re-examined by Mr. BECKWITH:

Q. The provest marshal's office was at one time on Canal street?

A. Yes, sir; No. 177.

Q. Then it was removed to where?

A. The corner of Carondelet and Perdido streets.

Q. You were occupied at both places while a detective?

A. I was employed all the time from the arrival of General Butler until the military occupation ceased.

Q. The provest marshall general's office was still another one?

A. Yes, sir; still another one. I reported to both by letter or in person, if necessary.

(Signed) ANGELEO V. WARD.

Sworn to and subscribed before me January 18, 1883.

F. A. WOOLFLEY, *Examiner.*

605 United States Circuit Court, Fifth Circuit, East District of Louisiana.

Mrs. MARIE P. EVANS *et's.*
vs.
DAVID URQUHART *et als.* } No. 7672.

Testimony on behalf of complainants resumed this 8th day of March, 1884.

Present: A. H. Leonard and W. R. Mills, Esqrs, for complainant-; James McConnell, Esq., for State National Bank, defendant.

Mr. Leonard, on behalf of complainant-, offers in evidence the depositions of Henry Perkins, C. A. Weed, J. H. McKee, and Mrs. Morris.

Also a copy of the act of mortgage from Stephen Duncan Linton to W. and D. Urquhart; also an abstract from the bankruptcy proceedings of D. Urquhart in the United States district court for the district of Louisiana.

Mr. McConnell, solicitor for the State National Bank, take- charge

of the above-offered documents tendered in evidence by the
606 complainant- for the purpose of perusal and examination, reserving the right to state objections to their reception in evidence hereafter.

Mr. Leonard, solicitor for complainants, now asks an adjournment to March 15th, 1881, at two o'clock p. m., at which meeting he states he will probably close his case for the complainants, reserving the right of The State National Bank, defendant, to offer testimony thereafter.

After which the adjournment was made to Saturday, March 15th, 1884, at two o'clock p. m.

607 NEW ORLEANS, *March 15th*, 1884.

Testimony resumed pursuant to adjournment.

Present: A. H. Leonard, solicitor for complainant-; James McConnell and H. B. Kelley, solicitors for The State National Bank, defendant.

EMORY E. NORTON, a witness produced, sworn, and examined on behalf of the complainants, deposes and says:

By Mr. LEONARD:

Question. I believe you were the assignee of C. A. Weed & Co. bankrupts?

Answer. Yes, sir; I have been twice assignee of said bankrupts.

Q. As such assignee, I suppose you had the commercial books of said firm?

A. They surrendered the commercial books to the assignee.

Q. Have you those books now?

A. Those books were sold about ten years ago, and taken from the office, and what has become of them I cannot tell you; they were sold at public auction.

Q. Do you remember to whom?

608 A. My recollection is that they were sold first to Zunts, James E., and at the time there was some misunderstanding about the purchase by Zunts, and they were put up again and re-sold.

Q. Do you know who bought the last time?

A. My impression is that John H. McKee bought them the last time. Mr. McKee was one of the firm of C. A. Weed & Co.

By consent of the solicitor for the parties the signature of the witness is waived.

F. A. WOOLFLEY, *Examiner*.

609 MARCH 15, 1884—continued.

JOHN CLEMENTS recalled, sworn on behalf of complainants, examined in chief by Mr. LEONARD, as follows:

Q. Mr. Clements, you have been examined as a witness in this case some time back?

A. Yes, sir.

Q. In your testimony previously given you said something in regard to seizures made in two suits against Stephen Duncan Linton, and in your answer to the question of Mr. Beckwith on the re-examination your answer as taken down is, "It was the Bank of New Orleans." The question was, as stated here, "What is your best recollection about this bank; was it the New Orleans Bank?" The answer as taken down here is, "It was the Bank of New Orleans." Now, I ask you is that answer correct or is that a clerical error?

A. No, sir; I don't think that either the question or the answer is right. It is not as I understood it. I think that the question, as I understood it at the time, was, "Is it a bank—was it a bank
610 in New Orleans?" and my answer was that it was a bank, domiciled, as I supposed, in New Orleans. That was my intention in answering it. I think that was the question, as I understood it.

By Mr. McConnell: To the answers and further examination of this witness the same objections are made that were made upon his examination-in-chief when he was previously examined, to wit, among others, that the testimony of the witness is not the best evidence of the fact sought to be proven, and is hearsay and irrelevant, and these objections are to be considered as made to any further testimony he may give without repetition.

By Mr. Leonard:

Q. Now judge to your best recollection what bank was it that made the seizure.

A. It was the Louisiana State Bank and Urquhart. There were two seizures.

Q. On whom were the papers served?

A. They were served on a man named Morris.

Q. Who was Morris; what connection did he have with the place?

611 A. I don't know, sir, that he had any except living there.

Q. Living on the place at the time?

A. Yes, sir.

Q. In your testimony as previously taken down the stenographer has in your answer, "I gave the notice of seizure to a man called Johnson." Is that statement correct or not?

A. It is not correct, sir. If I said so I was mistaken. If I said so at that time I was mistaken.

Q. The notice of seizure was then served on Morris?

A. Yes, sir.

Cross-examined by Mr. McConnell, on behalf of the State National Bank:

Q. Mr. Clements, you have not seen any papers since you were examined as a witness in this case by which to refresh your recollection, have you?

A. When I went home I thought over the matter.

Q. That is not my question. Have you seen any papers?

A. No, sir.

Q. That is all I ask you. You have not seen any papers?

A. No, sir.

612 Q. You were examined in this case, as appears from the record, as a witness on the 24th and 26th of January, 1881, were you not?

A. 1881.

Q. Is it '80 or '81? I cannot tell which. Probably at the end of it. We can tell. Either '80 or '81. Which was it?

A. Really I cannot tell you, sir. I don't think it was either. I think it was since that time.

Q. Therefore it has been three or four years since you were examined as a witness in this case?

A. It seems so by that. It seems to me that it is not that long, sir. I think there is a mistake in it.

Q. Your memory as to those facts certainly would be better then than it is now from the fact that you were nearer by that number of years to the time when these incidents transpired?

A. Yes, sir; that would be—(the witness here makes a voluntary statement)—I will say this in answer to that: I was here in New Orleans, brought up, without thinking of the matter or studying or thinking back about it, and it was some eighteen or

613 nineteen years, I believe, since the transaction, and my memory—i- was come in that way that my memory, I suppose, did not serve me as well then as it is now, after thinking and reflecting on the matter since.

Q. Was this man whom you called at one time Johnson in your previous testimony—whom in your previous testimony you called Johnson and who you now call Morris—was he a white man or a colored man?

A. White man, sir.

Q. Did he reside on the place?

A. Yes, sir; he was living there; had his family there, or a portion of them, at least.

Q. Who directed you to him?

A. No one in particular, sir. Mr. Elgee told me to go down and make the seizure. He was the only one on the place who appeared to have any charge—he was the only one who appeared to have any charge on the place.

Q. When was it that you made that seizure?

A. I made it in '63.

Q. What time.

A. After the raid of the—Federal raid.

614 Q. How long after?

A. Well, sir, it might be—it was not very long; it might be a month; i- might be a month or maybe a little over.

Q. Then, after you made this seizure, did you go back to Alexandria?

A. Yes, sir.

Q. Did you make a return on your paper in court?

A. I did.

Q. You did?
A. Yes, sir.
Q. Did you do anything else in regard to the plantation after that?
A. No, sir.
Q. Did you ever go back to the plantation again?
A. Ever go back?
Q. I mean to look after that seizure.
A. No, sir.
Q. How did you find out that this man whom in your previous testimony you called Johnson was named Morris; who told you that?
A. Who told me that?
Q. Yes.
A. No one told me.
Q. No one told you. Somebody must have told you his
614½ name at some time in your life?
A. He told me his name at the time, but when I came to reflect about it after I went home I noticed it was not Johnson; that it was Morris. If I called him Johnson at first I was mistaken.
Q. You found that out on your return; you found that out on your return home?
A. After I stayed home.
Q. And you got to thinking about it?
A. Thinking about it.
Q. Why did you not make the correction before this day, then, if you found that out after you returned home?
A. I wrote immediately to—or shortly afterwards I wrote to Mrs. Evans or to this man Buchard. I wrote to him and told him that on reflection that I had made a mistake in the name. He has got the letter, I suppose.
Q. Didn't you get a letter from Mr. Buchard calling your attention to the fact that you had made a mistake?
A. No, sir.
Q. Did you get a letter from anybody else calling your at-
615 tention to the fact that you had made a mistake?
A. No, sir.
Q. Well, did not somebody tell you verbally that you had made mistake?
A. No, sir.
Q. You say that the bank that you meant was the Louisiana State Bank and not the Bank of New Orleans?
A. Yes, sir.
Q. And yet in your testimony-in-chief you say that you are not able to say positively what bank it was?
A. But I believed then it was that bank. The more I thought over it the more—and the more I thought over it the more I was convinced of it.
Q. Still, did you not state in your examination-in-chief when you were previously examined here that you could not then state positively what bank it was?

A. I did, sir.
Q. But you were positive that Mr. Urquhart was one?
A. Yes, sir.
Q. Mr. Clements, Mr. Elgee was the attorney, was he not, who sent you down to that plantation?
A. Yes, sir.
616 Q. There is no doubt about that?
A. No doubt about it—that is, I got the papers and the clerk told me to follow Mr. Elgee's instructions.
Q. He was *was* the counsel in the case?
A. Yes, sir.
Q. There is no other matter in your testimony that was taken before that you expect to correct, is there?
A. Nothing except the name of that man, and that I am more positive about the bank.
Q. That is all?
A. That is all that I know.

Finis.

By consent of the solicitors for the parties the signature of this witness is waived.

F. A. WOOLFLEY, *Examiner.*

It is agreed by the solicitors for the parties that the signature of all former witnesses to their depositions are waived, and that the further taking of testimony is adjourned to Saturday, March 22nd, 1884.

F. A. WOOLFLEY, *Examiner.*

617 NEW ORLEANS, *March 22nd*, 1884.

Testimony resumed pursuant to adjournment.

Present: A. H. Leonard and W. Mills, solicitors for complainants; James McConnell, solicitor for State National Bank, defendant.

It is agreed the name Jackson Johnson may be inserted by the clerk in the commission issued to take depositions on the 15th day of March, A. D. 1884, and that said insertion shall have the same effect as though such name had been written in said commission as when it issued, and that the depositions of Johnson are not to be objected to on the ground that his name was not originally in the commission, and the officers therefore without authority to take his deposition.

Complainants offer in evidence the testimony of Jackson Johnson, taken under commission; the affidavits of J. R. Beckwith and H. B. Kelley, on file; transcript of record No. 304 of the probate court, Rapides parish.

Adjourned to March 25th, 1884.

618 UNITED STATES ATTORNEY'S OEFICE,
EASTERN DISTRICT OF LOUISIANA,
NEW ORLEANS, *March 22nd*, 1884.

It is agreed that the name Jackson Johnson may now be inser by the clerk in the commission issued to take depositions on

15th day of March, A. D. 1884, and that such insertion shall have the same effect as though such name had been written in said commission when it issued, and that the depositions of Johnson are not to be objected to on the ground that his name was not originally in the commission, and the officer therefore without authority to take his deposition.

Acknowledged before me and filed March 22nd, 1884.

F. A. WOOLFLEY, *Examiner.*

Complainants offer deposition — Jackson Johnson (taken under commission) & affits. of James R. Beckwith (on file) & affit. of Judge Kelley (on file); probate record No. 304, parish court of Rapides parish. Adjourned to 25th March; adj'd to 29th March; 29th March, adjourned till further notice.—W.

619 NEW ORLEANS, *March 25th*, 1884.

The solicitors of the parties met and adjourned to March 29th, 1884.

NEW ORLEANS, *March 29th*, 1884.

The solicitors of the parties met and adjourned until further notice.

NEW ORLEANS, *May 3d*, 1884.

By direction of the solicitors for the complainants the testimony on their behalf is now closed.

F. A. WOOLFLEY, *Examiner.*

UNITED STATES OF AMERICA, *Eastern District of Louisiana,* } *ss:*

I, F. A. Woolfley, examiner, duly appointed by the court aforesaid to take the depositions of Daniel W. Shaw, J. E. Wallace, R. C. Hutchinson, Thomas Kergan, E. H. Farrar, John Clements, Richard H. Hall, John M. Martin, Marie P. Evans, C. W. Killborn, James E. Zuntz, Angelo V. Ward, and Emory E. Norton, witnesses on the part of the complainants, do hereby certify that on the days
620 named in the proceeding depositions I was attended by said witnesses and counsel. The said witnesses were duly sworn and examined and their depositions reduced to writing and signed by J. E. Wallace, R. C. Hutchinson, Thomas Kergan, Richard H. Hall, C. W. Killborn, and Angelo V. Ward in my presence, and that the signatures of Daniel W. Shaw, E. H. Farrar, John Clements, John M. Martin, Marie P. Evans, James E. Zuntz, and Emory E. Norton to their depositions were waived by consent of said counsel.

I further certify the Exhibits "Complainant-' No. 1," "Complainant-' No. 2" (offered by The State National Bank, one of the defendants, on the cross-examination of Marie P. Evans), act of mortgage of Stephen Duncan Linton to W. & D. Urguhart, abstract of the bankruptcy of W. & D. Urguhart, the depositions — Henry Perkins, [illegible] *de bene esse;* C. A. Weed, J. H. McKee, Mrs. William Morris, Jackson Johnson, taken under commissions; the affidavits of J.

R. Beckwith and H. B. Kelley, on file in the cause, and the transcripts of record No. 304 of the probate court, Rapides parish, were introduced in evidence during the taking of said depositions.

New Orleans, May 17th, 1884.

F. A. WOOLFLEY, *Examiner.*

621 *Deposition of C. A. Weed. Filed 21st July*, 1883. *Offered in Evidence by Complainants March 8th*, 1884.

Commission.

Circuit Court of the United States for the Fifth Judicial Circuit, Holding Sessions in and for the District of Louisiana.

To any notary public or United States commissioner residing in the city of New York, State of New York:

Know ye that, reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to come before you Charles A. Weed, of the city of New York, State of New York, and him duly examine on the annexed interrogatories, on oath, touching and concerning certain matters and things in a case now depending in the said court wherein Marie P. Evans and husband are plaintiffs and D. Urquhart and State National Bank *et al.* are defendants, and the same examinations so taken and reduced to writing you certify under your hand and seal and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the Honorable Morrison R. Waite, Chief Justice
622 of the Supreme Court of the United States, at the city of New Orleans, this 16th day of Jan'y, anno Domini 1883, and
[SEAL.] the 107th year of the Independence of the United States of America.

(Signed) J. V. COUPLAND,
D'y Clerk.

Copy of Interrogatories.

MARIE P. EVANS and HUSBAND
vs.
LOUISIANA STATE NATIONAL BANK *et als.* } No. 7672.

Interrogatories propounded on behalf of complainants to John H. McKee, a witness residing in St. Louis, Missouri, and Charles A. Weed, of New York, State of New York.

Interrogatory 1. Where did you reside, in what commercial business, if any, were you engaged, and of what firm, if any, were you a member during the year 1864? Were you a member of the firm of C. A. Weed & Co.?

Interrogatory 2. Have you possession of or access to the commercial account books in which the affairs of said commercial business during said year 1864 were kept, or do you know where books are at this time; and, if so, where?

Interrogatory 3. At the time of the return of the military expedition under the command of Maj. General N. P. Banks from
623 the vicinity of Alexandria, La., in 1864, had you any knowledge of the shipment of cotton on steamboats and transports under the charge of said command? And, if yea, state what you may know in regard thereto and the source of your knowledge. And was any of said cotton received by your firm?

Interrogatory 4. If, in answer to the above 3rd interrogatory, you should say that any of said cotton was received by your firm, state by whom it was consigned or on whose account it was so received, and for and on whose account you disposed of the same, and to whom you accounted for the proceeds.

Interrogatory 5. If, in answer to the above 4th interrogatory, you should say that your firm received any of said cotton on account of J. Madison Wells or in which he was interested, please state when the same was so received, the amount thereof in bales or weight, what disposition your firm made of it; if sold, the price received therefor, to whom, the amount of, and how said price was paid by your firm.

Interrogatory 6. Should you answer the second interrogatory affirmatively, please annex to your answer, and under oath as to their verity, those portions of said commercial books which in any manner relate to the receipt and sale of the cotton inquired of in the foregoing fifth interrogatory and showing the account of
624 your firm with said Wells or any other party claiming the same in regard thereto; and if for any reason, which you will please state, you should not annex the said originals please annex copies, duly attested by you, of said portions of said commercial books.

Interrogatory 7. During the year 1864 were you acquainted with the late J. M. Lapeyre, and whether during said year he held any, and, if so, what, official connection with the Louisiana State Bank?

Interrogatory 8. If, in answer to the foregoing seventh interrogatory, you should say that said Lapeyre was officially connected with said Louisiana State Bank, please state whether said bank was interested in any of the cotton inquired of in the foregoing fifth interrogatory; and, if yea, state in what said interest consisted and the source of your knowledge in this regard.

Interrogatory 9. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answers.

(Signed) J. R. BECKWITH,
Sol'r for Compl't.

241½ CLERK'S OFFICE.

A true copy of the original filed January 9th, 1883.
w Orleans, January 15th, 1883.
EAL.] (Signed) T. V. COUPLAND, *D'y Clerk.*

Copy of Exceptions & Cross-Interrogatories of State National Bank.

MARIE P. EVANS and HUSBAND
vs.
D. URQUHART, STATE NAT'L BANK, *et al.* } No. 7672.

The State National Bank, one of the defendants herein, having been served with a copy of interrogatories propounded by the complainant- to John H. McKee and Charles A. Weed, and notified to file cross-interrogatories thereto, now first reserving all legal exceptions, they specially except to the said interrogatories, and more particularly the sixth, and to any and all answers thereto so far as the same may attempt to state the contents of the account books of C. A. Weed & Co. or any part thereof, or to give portions of the originals thereof or copies of portions or the whole thereof, on the grounds that the account books of C. A. Weed & Co. are inadmissible as evidence against them for any purpose, being *res inter alios acta,*
625 being the acts and writings of third parties done out of the presence of defendants, being unsworn, and to which defendants were not parties and by which they cannot be affected.

If the foregoing objections are overruled, then and only in that event defendants further except that the said account books themselves as a whole are the best evidence of what they purport to contain, and defendants are entitled to their production and to an inspection and investigation thereof, and cannot be made to accept either portions of the originals or copies thereof or any part thereof.

Not waiving the foregoing exceptions and objections, but insisting on the same and subject thereto, and in obedience to the court requiring them to file cross-interrogatories herein within three days, the said defendants now file the following cross-interrogatories, to wit:

First. State where you have resided and done business continuously during each year since 1864 down to and including the present year.

Second. When did you last see the account books of C. A. Weed & Co.? Were they not all surrendered when that firm went
626 into bankruptcy; and, if so, when and with whom were they then deposited?

Third. If you answer affirmatively to any of the matters inquired of in any of the interrogatories-in-chief propounded to you, please state precisely the portions of such answers that are made upon what you know personally and what you heard from others; and in every instance that you say you had personal knowledge state precisely how you obtained such personal knowledge, from whom, how, when, and where.

Fourth. Can you say positively that Mr. J. M. Lapeyre was president of the Louisiana State Bank in the year 1864? Do you know when he became president and when he ceased to be such? St precisely what you know on the subject.

Fifth. If you state, as inquired of, that the said bank was i

ested in said cotton, state precisely how you know it, from whom, when, and where did you learn it. State precisely, if you please, as to the persons, dates, places, &c.

(Signed) J. McCONNELL,
Sol. for State Nat'l Bank.

Jan'y 13, 1883.

CLERK'S OFFICE.

[SEAL.] A true copy of the original on file.
New Orleans, January 15th, 1883.
(Signed) T. V. COUPLAND, *D'y Clerk.*

627 *Copy of Exceptions & Cross-Interrogatories of Mrs. A. Lapeyre & Others.*

MARIE P. EVANS and HUSBAND
vs.
D. URQUHART and STATE NATIONAL BANK. } No. 7672.

T. Gilmore & Sons, solicitors for Angelina Lapeyre and others, defendant- herein, having been served with a copy of interrogatories propounded by the complainants to John H. McKee and Charles A. Weed & Co., and notified to file cross-interrogatories thereto, now first reserving all legal exceptions, they specially except to the said interrogatories, and more particularly the sixth, and to any and all answers thereto, so far as the same may attempt to state the contents of the account books of C. A. Weed & Co. or any part thereof, or to give portions of the originals thereof or copies of portions or the whole thereof, on the grounds that the books of C. A. Weed & Co. are inadmissible as evidence against them, being *res inter alios acta*, being the acts and writings of third parties done out of the presence of defendants, being unsworn, and to which defendants were not parties and by which they cannot be affected. If the
628 foregoing objections are overruled, then and only in that event defendants further except that the said account books themselves as a whole are the best evidence of what they purport to contain, and defendants are entitled to their production and to an inspection and examination thereof, and cannot be made to accept either portions of the originals or copies thereof or any part thereof.

Not waiving the foregoing exceptions and objections, but insisting on the same and subject thereto, and in obedience to the order of court requiring them to file cross-interrogatories herein within three days, the said defendants now file the following cross-interrogatories, to wit:

First. State where you have resided and done business continuously during each year since 1864 down to and including the present year; what is your present post-office address, and the nature of your business.

Second. When did you last see the account books of C. A. Weed Co.? Were they not all surrendered when the firm went into kruptcy; and, if so, when and with whom were they then depos-
?

Third. If you answer affirmatively to any of the matters
629 inquired of in any of the interrogatories-in-chief propounded to you, please to state precisely the portions of such answers that are made upon what you know personally and what you have heard from others, and in every instance that you say you had personal knowledge state precisely how you obtained such personal knowledge, from whom, how, when, and where.

(Signed) T. GILMORE & SONS, *Solicitors.*

CLERK'S OFFICE.

[SEAL.] A true copy of the original on file.
New Orleans, January 15th, 1883.

(Signed) T. V. COUPLAND, *D'y Clerk.*

Depositions of witness taken before Perry M. Washabaugh, a notary public for the Commonwealth of Pennsylvania, residing in the city of Chester, at his office, on Tuesday, July 17th, 1883, by virtue of the annexed rule and in accordance with the annexed notice.

C. A. WEED, a witness produced by the plaintiff, being duly sworn according to law.

In answer to first interrogatory witness says: I resided in the city of New Orleans in the year 1864 and was in the commission
630 business and a member of the firm of C. A. Weed & Co.

In answer to second interrogatory witness says: I have not possession of nor access to the firm's account books for the year 1864. I do not know where they are now. The last time I saw them they were in the office of E. E. Norton, in the city of New Orleans.

In answer to the third interrogatory witness says: In 1864 I was receiving cotton by steamer from the Red River country; some was purchased by and consigned to the firm.

In answer to the fourth interrogatory witness says: In 1864 J. Madison Wells consigned to us a large quantity of cotton. We supposed at the time he purchased it on joint account, we having advanced him twenty-five thousand dollars for that purpose, but when Mr. Wells came to New Orleans he told us he had not bought any cotton; that this cotton which he had shipped to us belonged to the Louisiana State Bank. We sold the cotton and accounted to Mr. Wells for the proceeds.

631 In answer to the fifth interrogatory witness says: Not having the books, I am unable to give the time of this transaction, the quantity of cotton, or the price for which it sold. But this is the only cotton transaction we had with Mr. Wells, and that we received this cotton from the Government transports.

In answer to the sixth interrogatory witness says: Not having the books of the firm of C. A. Weed & Co., I am unable to answer this interrogatory, except that I know a man by the name of Zunts made a claim to have an interest in said cotton under a contract with Mr. John M. Lapeyre, who was president of the Louisiana State Bank, and I remember Mr. Zuntz came to us and made an effort to obt

possession of the cotton under his contract with the president of that bank.

In answer to the seventh interrogatory witness says: I know J. M. Lapeyre, and that he was president of the Louisiana State Bank in the year 1864, and that the said bank owned or controlled a large amount of cotton in the Red River country.

In answer to the eighth interrogatory witness says: I can only refer to my answer in sixth and seventh interrogatories as to my information. All I know about it was from Mr. Wells and Mr. Zunts.

632 & 633 In answer to the ninth interrogatory witness says: I knew Mr. Lapeyre was a large speculator in cotton during the year 1864. I went to his bank several times with a view of purchasing cotton from him, but I cannot tell now whether any of the transactions were carried out with him or not.

(Signed) C. A. WEED.

Witness sworn, deposition read over to him, and subscribed before—

[SEAL.] (Signed) PERRY M. WASHABAUGH,
Notary Public.

STATE OF PENNSYLVANIA:

I, Perry M. Washabaugh, above named, a notary public for the Commonwealth of Pennsylvania, duly commissioned and sworn, residing in the city of Chester, do certify that C. A. Weed, the above-named witness produced by the plaintiff in the above-named cause, was sworn and the foregoing deposition taken and subscribed before me, at my office, in the city of Chester, on Tuesday, July 17th, 1883.

[SEAL.] Witness my hand and seal this 17th day of July, A. D. 1883.

(Signed) PERRY M. WASHABAUGH,
Notary Public.

634 Depositions of witness taken before Perry M. Washabaugh, a notary public for the Commonwealth of Pennsylvania, duly commissioned and sworn, residing in the city of Chester, at his office, on Tuesday, July 17th, 1883, by virtue of annexed rule and notice.

C. A. WEED, a witness produced for cross-examination by defendants, being duly sworn, says, in answer to 1st cross-interrogatory: I resided in New Orleans from 1864 to 1873. I resided at Stamford, Connecticut, from 1873 to 1882, and since that time have resided in Chester, Pennsylvania, where I now reside.

In answer to 2nd cross-interrogatory says: I last saw the account books of C. A. Weed & Co. in 1870. They were then in the [illegible] of E. E. Norton, in the city of New Orleans. It may have been later since I saw them last.

In answer to 3rd cross-interrogatory says: I have answered
635 as fully and particularly as I am able the interrogatories propounded in my examination-in-chief.

In answer to 4th cross-interrogatory says: I simply know that J. M. Lapeyre was president of the Louisiana State Bank from my having business with him as such. I do not know when he was elected or when he ceased to be president of that bank.

In answer to the 5th cross-interrogatory says: I know that the Louisiana State Bank was interested in said cotton. I learned this fact from Mr. Wells, who said the cotton belonged to the bank, and Mr. Zuntz, who claimed it, saying he had a contract with the bank. This was about the time we received the cotton and before the sale of the cotton.

(Signed) C. A. WEED.

Witness sworn, deposition read over to him, and subscribed before—

[SEAL.] (Signed) PERRY M. WASHABAUGH,
Notary Public.

636 STATE OF PENNSYLVANIA:

I, Perry M. Washabaugh, above mentioned, a notary public for the Commonwealth of Pennsylvania, duly commissioned and sworn, residing in the city of Chester, do certify that C. A. Weed, the above-named witness, produced by the defendants in above case for cross-examination, was sworn and the foregoing depositions taken and subscribed before me, at my office, in the city of Chester, on Tuesday, July 17th, A. D. 1883.

[SEAL.] (Signed) PERRY M. WASHABAUGH,
Notary Public.

637 *Commission, Interrogatories, and Cross-Interrogatories to and Deposition of Mrs. William Morris. Filed February 1st,* 1884. *Offered in Evidence by Complainants March 8th,* 1884.

UNITED STATES OF AMERICA.

Circuit Court of the United States for the Fifth Judicial Circuit, Holding Sessions in and for the Eastern District of La.

To any judge, justice of the peace, United States commissioner, or notary public residing in the parish of Rapides, State of Louisiana:

Know ye that, reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to come before you Mrs. William Morris and her duly examine on the annexed interrogatories on oath touching and concerning certain matters and things in a case now depending in the said court wherein Marie P. Evans *et al.* are plaintiffs and The State National Bank *et al.* are defendants, and the same examinations taken and reduced to writing you certify under your hand and seal and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the Honorable Morrison A. Waite, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 26th day of January, anno Domini 1884, and of the Independence of the United States of America the — year.

[SEAL.] (Signed) F. A. WOOLFLEY, *Clerk.*

638 MARIE P. EVANS & HUSBAND *vs.* THE STATE NATIONAL BANK *et al.* } No. 7672.

Interrogatories propounded on behalf of complainants to Mrs. William Morris, a witness residing in the parish of Rapides, State of Louisiana.

Interrogatory 1st. What was your residence in the years 1862 and 1863? Were you then a married woman? If yea, state the name of your husband and his occupation and residence. Is he now living; if not, when did he die?

Int. 2. Were you acquainted with the late Stephen D. Linton? What, if any, business connection had your husband with him in the said years 1863 & 1864?

Int. 3. Were you acquainted in the year 1863 with John Clements at the time he was a deputy sheriff for the parish of Rapides? And, if yea, state what, if anything, you may know regarding his having in the year 1863 certain writ or writs against the property of said Stephen D. Linton; and, if yea, state the number, whether one or more; in whose favor as plaintiff they were issued; the amount, respectively, of said writs; whether seizures were made by said Clements under them; what kind and amount of property was so seized;

upon whom notice or notices of said seizures were made;

639 upon whom the notices of seizure on said Stephen D. Linton were served; what became of said notices; and state fully your source of knowledge as to the answers you may make to this interrogatory.

Int. 4. Do you know who was appointed keeper of the property so seized as inquired of in foregoing interrogatory; if yea, who was so appointed, and did he act as said keeper, and how long a time?

Int. 5. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in the foregoing cause or that may be material to the subject of this your examination on the matter in question in this cause? If yea, set forth the same fully and at large in your answer.

(Signed) A. H. LEONARD,
Per WM. REED MILLS,
Solicitor of Complainants.

CLERK'S OFFICE.

true copy of the original on file.
Orleans, January 26th, 1884.
EAL.] (Signed) F. A. WOOLFLEY.
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MARIE P. EVANS *et al.*
vs.
STATE NATIONAL BANK, D. URQUHART, *et al.* } No. 7672.

640 The State National Bank, one of the defendants in the above entitled and numbered cause, having been served with a copy of interrogatories herein propounded to Mrs. William Morris, a witness residing in the parish of Rapides, now comes, and, first reserving all legal exceptions, *and* specially excepts to the issuance of the commission herein in view of the order of this honorable court directing the complainant to close her testimony within a fixed delay.

Under reservation of all legal exceptions, said defendant propounds to said witness the following cross-interrogatories:

First cross-interrogatory. Where were you born, and when? What was your maiden name?

NOTE.—This defendant specially excepts to the third interrogatory-in-chief and to any answer or matter elicited under the same, directly or indirectly, on the ground that such answers would not be the best evidence, but secondary evidence of the matters inquired of; that the record of the suits and the writs themselves and returns of the proper officers thereon should be adduced or their loss first shown; that said testimony is merely hearsay and illegal and inadmissible.

Second cross-interrogatory. If you say you knew John Clements how did you know he was a deputy sheriff? Who appointed
641 him as such? When was he appointed, and in what court? Is he living at this time? If so, where? If he is dead state when and where he died.

Third cross-interrogatory. When were you married, and where? When did you reside in Rapides parish, and during what period of time? What was your husband's occupation in the years 1862, 1863, 1864, and 1865?

Fourth cross-interrogatory. How long have you been acquainted with the complainant in this suit, Mrs. Marie P. Evans? Have you any interest or promise of any in the result of this suit?

(Signed) J. McCONNELL,
Sol. for State Nat. Bank.

CLERK'S OFFICE.

A true copy of the original on file.
New Orleans, January 26th, 1884.
[SEAL.] (Signed) F. A. WOOLFLEY, *Clerk.*

MARIE P. EVANS & HUSBAND
vs.
THE STATE NATIONAL BANK *et als.* } No. 7672.

THE STATE OF LOUISIANA,
Parish of Rapides.

Be it known that on this thirtieth day of January, anno Do

eighteen hundred and eighty-four, by virtue of a commission
642 from the honorable the United States circuit court for the eastern district of Louisiana, hereto annexed, in the case entitled Marie P. Evans and Husband *versus* The State National Bank *et al.*, being No. 7672 of the docket of said court, — have this day caused Mrs. William Morris, the witness named in the interrogatories, a resident of this parish and State, to come before me, and, after having duly sworn her to answer truly to the said interrogatories and cross-interrogatories annexed thereto, she answers as follows, to wit, on the part of plaintiff-:

Interrogatory first. What was your residence in the years 1862 and 1863? Were you then a married woman? If yea, state the name of your husband and his occupation and residence. Is he now living? If not, when did he die?

Answer to first interrogatory. My residence was in Rapides parish, Louisiana, and I lived from June, 1863, until November, in 1863, with my husband on the Quantico plantation. My husband was overseer on the place. My husband's name was William Morris. During the time I have mentioned he was manager on the Quantico plantation. His occupation was that of overseer on plantations. He is dead. He died the 15th day of January, 1884.

643 Interrogatory second. Were you acquainted with the late Stephen D. Linton? What, if any, business connection had your husband with him in the said years 1863 & 1864.

Answer to second interrogatory. I was acquainted with the late Stephen D. Linton. My husband was overseeing for him and managing his plantation, as I have before stated.

Interrogatory third. Were you acquainted, in the year 1863, with John Clements at the time he was a deputy sheriff for the parish of Rapides? And, if yea, state what, if anything, you may know regarding his having, in the year 1863, certain writ or writs against the property of said Stephen D. Linton; and, if yea, state the number, whether one or more, in whose favor as plaintiff they were issued, the amount respectively of said writs, whether seizures were made by said Clements under them, what kind and amount of property was so seized, upon whom notice or notices of said seizure were made, upon whom the notices of seizure on said Stephen D. Linton were served, what became of said notices, and state fully your source of knowledge as to the answers you may make to this interrogatory.

Answer to third interrogatory. In the year 1863 and for some time before I was acquainted with John Clements, who at
644 that time was deputy sheriff for the parish of Rapides. I know that some time in August of the year 1863 Mr. John Clements came to the Quantico plantation with writs of seizure gainst Stephen D. Linton. There were two writs of seizure—one r the Louisiana State Bank for a very large amount, and the other Mr. Urquhart, a merchant of New Orleans, for a smaller amount. nnot state the exact amount. Mr. John Clements made the e. He seized all the cotton there was on the place. There

was a very large amount; some two thousand bales, so Mr. Morris told me. The notices of seizure were made on my husband, Mr. Morris. Mr. Linton was not on the plantation. The notices of seizure on Stephen D. Linton were served on my husband. My husband had these notices for a long time, as also some letters of Mr. Linton's, but I do not know what has become of them. My means of knowledge as to the time was that my husband was cutting hay at the time. Mr. Clements made the seizure. As to the writs of seizure, I saw them in my husband's hands, and he read them to me, and we talked a great deal about the matter, as Mr. Morris was very much bothered with the seizure.

645 Interrogatory fourth. Do you know who was appointed keeper of the property so seized as inquired of in foregoing interrogatory? If yea, who was so appointed, and did he act as said keeper, and how long a time?

Answer to fourth interrogatory. Mr. James Madison Wells was appointed keeper on the same day. He acted as keeper; I cannot say for how long. I left the plantation in November, 1863, and my husband remained there until February, 1864, and at the time my husband left Mr. Morris was still keeper.

Interrogatory fifth. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in the foregoing cause or that may be material to the subject of this your examination or the matter in question in this cause? If yea, set forth the same fully and at large in your answer.

Answer to fifth interrogatory. Mr. J. Madison Wells took charge of all the cotton after the seizure was made. The stock on the place was not seized, as it was on the upper portion of the plantation, but Mr. Wells took charge of everything, stock and all, and when we left there we left it in his possession.

First cross-interrogatory. Where were you born and when?

646 What was your maiden name?

Answer to first cross-interrogatory. I was born in Alabama, in Lafayette county, in August, 1830. My maiden name was Sarah Ann Orr.

Second cross-interrogatory. If you say you knew John Clements how did you know he was a deputy sheriff? Who appointed him as such? When was he appointed, and in what court? Is he living at this time? If so, where? If he is dead state when and where he died.

Answer to second cross-interrogatory. I knew he was deputy sheriff in 1863, because he served writs on Mr. Morris, my husband. I do not know who appointed him, when appointed, or in what court. I know he was deputy sheriff then and for some time after. He is now living at Alexandria.

Third cross-interrogatory. When were you married, and where

When did you reside in Rapides parish, and during w

647 period of time? What was your husband's occupation i

years 1862, 1863, 1864, and 1865?

Answer to third cross-interrogatory. I was married in R

parish, Louisiana, November 11th, 1847. I have resided in Rapides parish since I was a child. In 1862, the early part of the year, he was overseer on the Stafford place, and remained there until September of the same year. In May, 1863, he overseed on the Quantico plantation until February, 1864, at which time he went to his home, in the pine woods, where he remained until the time of his death.

Fourth cross-interrogatory. How long have you been acquainted with the complainant in this suit, Mrs. Marie P. Evans? Have you any interest or promise of any in the result of this suit?

Answer to fourth cross-interrogatory. I never saw her. I have no interest or promise of any in this suit. I had no acquaintance at all with her.

(Signed) SARAH A. MORRIS.

Sworn to and subscribed before me this 30th day of January, A. D. 1884.

[SEAL.] (Signed) L. V. MARYE, *Not. Pub.*

648 It is hereby certified that on this the thirtieth day of January, A. D. 1884, personally came before me Madam Sarah A. Morris, the witness in the above-entitled cause; that previous to her examination she was duly and properly sworn by me to declare the truth, the whole truth, and nothing but the truth concerning the matters under examination; that the interrogatories and cross-interrogatories in the annexed commission were propounded to her by me, and her answers as dictated by her were taken down in writing by me, and that she signed her name thereto in my presence on the day and in that behalf first stated, and that I read the same over to her after her testimony had been taken and she declared herself satisfied therewith.

In testimony whereof I hereto set my hand and seal this the 30th day of January, A. D. 1884.

[SEAL.] (Signed) L. V. MARYE,
Notary Public.

649 *Commission, Interrogatories, and Cross-Interrogatories to and Deposition of Jackson Johnson. Filed March 21st,* 1884. *Offered in Evidence by Complainants March 22nd,* 1884.

UNITED STATES OF AMERICA:

Circuit Court of the United States for the Fifth Judicial Circuit, Holding Sessions in and for the Eastern District of Louisiana.

To any judge, justice of the peace, United States commissioner, or notary public residing in the parish of Rapides, State of Louisiana:

Know ye that, reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you [illegible] and cause to come before you Cole Calvit, Jackson Johnson, and [illegible] duly examine on the annexed interrogatories on oath touching and concerning certain matters and things in a case now de-

pending in the said court, wherein Marie P. Evans *et al.* are plaintiffs and The State National Bank and others are defendants; and the same examinations so taken and reduced to writing you certify under your hand and seal and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 15th day of March, anno Domini 1884, and of the Independence of the United States of America the 108th year.

[SEAL.] (Signed) E. R. HUNT, *Clerk.*

650 MARIE P. EVANS and HER HUSBAND
vs.
STATE NATIONAL BANK & Others. } No. 7672.

Interrogatories propounded on behalf of complainants to J. Madison Wells, Cole Calvit, & Jack. Johnson, of the parish of Rapides, Louisiana.

Interrogatory 1. Were you acquainted with the late Stephen Duncan Linton?

Interrogatory 2. Did you, on or previous to year A. D. 1863, know a plantation situated in the parish of Rapides belonging to said Stephen Duncan Linton? If yea, state the name by which it was known. Who was overseer on said plantation in the year 1863? Was there at that time any cotton thereon; if yea, how much?

Interrogatory 3. State whether in the year 1863 you held any connection, official or otherwise, with property belonging to said Linton; if yea, state what connection, under what circumstances and authority you held it.

Interrogatory 4. If in answer to the above interrogatory you should answer that your connection with the property of said Linton arose under certain seizure or seizures, please state from what court or what suits and under what kind of writs said seizure *and*
made, state the source of your knowledge, and please
651 annex such written evidence thereof as you may have in your possession.

(Signed) A. H. LEONARD,
Solicitor for Compl'ts.

The State National Bank, one of the defendants in the above entitled and numbered suit, having been served with interrogatories propounded by complainant to J. Madison Wells, Cole Calvit, and Jack. Johnson, as witnesses, of the parish of Rapides, La., now comes and first excepts to the issuance of any commission herein or further taking of testimony by complainant in consequence of the order of this hon. court herein rendered on the 4th day of June, 1883, and further excepts to any statement or answer that may be given by said witnesses or either of them to said interrogatories or either thereof, but more especially the 3rd & 4th interrogatories, on

ground the answers thereto would not be the best evidence of the facts sought to be proved; the records and writs, &c., referred to being the best evidence, parol proof thereof is inadmissible. Respondent reserves all other legal objections and exceptions of every nature in the premises.

Subject to said exceptions and objections respondent propounds the following cross-interrogatories:

1st cross-int. Where do you reside at this time and what is your occupation?

652 2nd cross-int. Do you know the plaintiff in this suit? How long have you known her? Have you any interest in the result of this suit? If yea, state what that interest is.

3rd cross-int. If you, of your own personal knowledge, know any facts tending to show that the complainant should not recover judgment in this suit, please state those facts.

(Signed) J. McCONNELL,
Sol. for State Nat. Bank.

CLERK'S OFFICE.

True copies of the originals on file.
New Orleans, March 15th, 1884.
[SEAL.] (Signed) E. R. HUNT, *Clerk.*

MARIE P. EVANS *et al.*
vs.
STATE NATIONAL BANK *et als.* } No. 7672.

Be it remembered that on this the eighteenth day of March, A. D. eighteen hundred and eighty-four, I, Louis V. Marye, a notary public in and for the parish of Rapides, in the State of Louisiana, duly commissioned and sworn and empowered to administer oaths and take depositions, acting under and by virtue of the annexed commission issued out of the United
653 States circuit court for the eastern district of Louisiana, entitled Marie P. Evans *et als. versus* State National Bank *et als.*, being number 7672 of the docket of said court, have this day caused Jackson Johnson, one of the witnesses named in the petition, to come before me, the other witness, Cole Calvit, not appearing, and being informed that it was impossible to procure him on account of the overflow of the section of the country in which he resides, and being also informed that the omission of name of Jack. Johnson in the commission was a clerical error, I proceeded to execute the commission.

JACKSON JOHNSON, a witness on the part of plaintiff, being by me duly sworn, answers as follows to interrogatories and cross-interrogatories as follows, to wit:

First interrogatory. Were you acquainted with the late Stephen Dan Linton?

Answer to first interrogatory. Yes, sir. I was well acquainted with him.

Second interrogatory. Did you, on or previous to year A. D. 1863, know a plantation situated in the parish of Rapides belonging to said Stephen Duncan Linton? If yea, state the name by which it was known, who was overseer on said plantation in the
654 year 1863. Was there at that time any cotton thereon? If yea, how much?

Answer to second interrogatory. I knew a plantation in the parish of Rapides on and previous to that date belonging to Stephen Duncan Linton. It was known by the name of Quantico plantation. Mr. William Morris, now deceased, was the overseer on that plantation in the year 1863. There was between seventeen and eighteen hundred bales, more or less, on the place at that time.

Third interrogatory. State whether, in the year 1863, you held any connection, official or otherwise, with property belonging to said Linton; if yea, state what connection, under what circumstances & authority you held it.

Answer to third interrogatory. I was engineer on the place in 1863 and 1864. I was put there in 1863 by Mr. Linton, and in 1864 I was put there by J. Madison Wells.

Fourth interrogatory. If, in answer to the above interrogatory, you should answer that your connection with the property of said Linton arose under certain seizure or seizures, please state from what court or what suits and under what kind of writs said seizures were made; state the source of your knowledge, and please annex such written evidence thereof as you may have in your possession.

Answer to fourth interrogatory. I knew Mr. John Clem-
655 ents, who was deputy sheriff of this parish in 1863, some time in the month of August, 1863. Mr. Clements came to Quantico plantation with two writs of seizure and served them on Mr. Morris, Mr. Linton being absent. The one was the writ of Louisiana State Bank *versus* Stephen Duncan Linton; the other was a writ from some merchant in New Orleans. These writs were from the court of the parish of Rapides.

Cross-Interrogatories.

First cross-interrogatory. Where do you reside at this time, and what is your occupation?

Answer to first cross-interrogatory. I reside in the parish of Rapides and my occupation is that of an engineer.

Second cross-interrogatory. Do you know the plaintiff in this suit? How long have you known her? Have you any interest in the result of this suit? If yea, state what that interest is.

Answer to second cross-interrogatory. I know the plaintiff in this suit. I have seen her several times on the plantation. I knew her as late back as 1856 or 1857. I have no interest whatever in the result of this suit.

Third cross-interrogatory. If you of your own personal knowledge know any facts tending to show that the complainant should not recover judgment in this suit, please state those facts.

656 Answer to third cross-interrogatory: I know nothing beneficial to the defendant.

(Signed) J. JOHNSON.

Sworn to and subscribed before me this 18th day of March, A. D. 1884.

(Signed) L. V. MARYE,
Notary Public.

It is hereby certified that on this the eighteenth day of March, A. D. 1884, personally came and appeared before me Jack. Johnson, who, previous to his examination, was duly and properly sworn to tell the truth, the whole truth, and nothing but the truth concerning the matters under examination; that the interrogatories and cross-interrogatories hereto annexed were propounded to him and his answers thereto were taken down in writing by me as dictated by him and then read by me to him, and he signed the same in my presence on the day and date in that behalf first stated.

In testimony whereof I hereto set my hand and seal officially this the 18th day of March, A. D. 1884.

(Signed) L. V. MARYE,
[SEAL.] *Notary Public.*

657 *Affidavit and Order to Take Testimony de Bene Esse, Notice of Testimony, Proof of Service, Testimony de Bene Esse of Henry Perkins. Offered in Evidence by Complainants March 8th, 1884.*

Mrs. MARIE P. EVANS & HUSBAND
vs.
DAVID URQUHART *et als.*
} No. 7672.

DISTRICT OF LOUISIANA, *ss:*

Marie P. Evans, being first duly sworn, deposeth and saith that she is plaintiff in the above-entitled cause pending in the circuit court of the United States for the district of Louisiana, and that she is advised by her counsel and verily believes that the testimony of Henry Perkins, of the parish of West Feliciana, in the State of Louisiana, is material and necessary for the deponent in the prosecution of such cause, and that the said Henry Perkins resides near Bayou Sara, more than one hundred miles from the city of New Orleans, in said district, where said cause must be tried and where the court at which such cause must be tried is held, and the deponent saith that the following-named persons and corporations are defendants in this cause, and, as she is informed and believes, reside as hereinafter
58 set forth—that is to say, David Urquhart resides in the city of New Orleans, represented by B. F. Jonas, his solicitor; the State
onal Bank, a corporation domiciled in the said city of New Or-
represented by James McConnell, its solicitor; J. Madison Wells
Madison Wells, Jr., also resident of said city of New Orleans,
nted by John Ray, solicitor; Angelina A. Lapeyre, individu-

ally and as tutrix of Albert Lapeyre; Louise Lapeyre, wife of Francis J. Gasquet, and F. J. Gasquet, her husband, all residents of said city of New Orleans, represented by Messrs. T. Gilmore & Sons & J. A. Campbell, their solicitors, and that all of said above-named solicitors reside in the said city of New Orleans; that the said witness, Henry Perkins, is ancient and infirm.

(Signed) MARIE P. EVANS.

Sworn to and subscribed before the undersigned, a commissioner of the circuit courts, duly appointed and sworn by the circuit court of the United States in and for the district of Louisiana, at New Orleans, as witness my hand and seal, at New Orleans, this July 24, '78.

(Signed) ANDREW HERO, JR.,
[SEAL.] *Commissioner of Circuit Court.*

659 MARIE P. EVANS & HUSBAND *vs.* DAVID URQUHART *et als.* } No. 7672.

Let the witness, Henry Perkins, named in the above and foregoing affidavit, be examined *de bene esse* before me at my office, No. 17 Commercial Place, in the city of New Orleans, State of Louisiana, on the 27th day of July, A. D. 1878, at the hour of 10 o'clock a. m., and let twenty-four hours' notice be given to the defendants David Urquhart, The State National Bank of New Orleans, J. Madison Wells, J. Madison Wells, Jr., Angelina A. Lepeyre, Albert Lapeyre, Louise Gasquet, and Francis J. Gasquet, or to their said solicitors as named and set forth in the said foregoing affidavit.

Dated New Orleans, this 24th day of July, A. D. 1878.

(Signed) ANDREW HERO, JR.,
Commissioner of Circuit Court.

MARIE P. EVANS & HUSBAND *vs.* DAVID URQUHART *et als.* } No. 7672.

660 To David Urquhart, The State National Bank of New Orleans, J. Madison Wells, J. Madison Wells, Jr., Angelina A. Lapeyre, individually and as tutrix of minor heirs of J. M. Lapeyre, deceased; Louise Gasquet, and Francis J. Gasquet, defendants; and to James McConnell, B. F. Jonas, Thomas Gilmore & Sons, John A. Campbell and John Ray, solicitors, representing said defendants in this cause:

You and each of you will please take notice that Henry Perki[ns] who resides in the parish of West Feliciana, in the State of Lo[uis]iana, will be examined *de bene esse* on the part of the plaintiffs i[n] above-entitled cause at my office, No. 17 Commercial Place, [in] city of New Orleans, State of Louisiana, on the 27th day o[f] A. D. 1878, at 10 o'clock a. m. of that day, at which time an[d]

you are notified to be present and put interrogatories to said witness if you shall think fit.

Dated at New Orleans this 24th day of July, A. D. 1878.

(Signed) ANDREW HERO, JR.,
Commissioner of Circuit Court.

STATE OF LOUISIANA,
District of Louisiana.

661 William R. Evans, being first duly sworn, deposeth and saith that he made due service of the notice in writing hereto annexed on the persons and corporation therein named in the following manner, on the 24th day of July, A. D. 1878, at the city of New Orleans, in the district and State aforesaid—that is to say, on the State National Bank of New Orleans, by leaving with Chas. L. C. Dupuy, the cashier of said bank—the president of said bank being absent from the city and the said cashier stating that he could leave the same with him; that it was all right—a duplicate of the said foregoing notice, at the city of New Orleans, at the hour of 9 o'clock & 50 minutes a. m. of said 24th day of July, 1878.

That he on the same day served the said notice on John Ray, Esq., the solicitor of J. Madison Wells and J. Madison Wells, Jr., by delivering to and leaving with a son of the said John Ray, a person of the age of 14 years and more, in attendance at the law office of his said father, in the city of New Orleans, a duplicate of said notice, the said J. Madison Wells and J. Madison Wells, Jr., not being in the city and, as deponent is informed and believes, being distant more than one hundred miles from the city of New Orleans, and the said John Ray, solicitor for said last-named persons,

662 not being present at his office at the time; that he explained to his son the nature of said notice, who informed him, deponent, that he would hand the same to his father, the said John Ray; that said notice was so served on the 24th day of July, A. D. 1878, at 10 o'clock & 10 minutes a. m. of said day.

That he also, on the same day, at about the hour of 10 o'clock & 30 minutes a. m. of said day, *he* served said notice on Mrs. Angelina A. Lapeyre, in the city of New Orleans aforesaid, by delivering to and leaving with her at her residence in said city a duplicate of said notice.

That he also, on the same day, at the hour of 11 o'clock & 50 minutes a. m. of said day, July 24th, 1878, served said notice on Messrs. Thomas Gilmore and Sons, solicitors for the said Louise and Francis J. Gasquet, by delivering to and leaving with Thomas Gilmore at his office, in the city of New Orleans aforesaid, a duplicate of said notice, the said Gasquets not being in this State at the time of such service.

That he, on the same day, to wit, the 24th day of July, A. D. 1878, at the hour of 6 o'clock & 15 minutes p. m. of said day, served said notice on the said David Urquhart, in the city of New Orleans, in this State, by delivering to and leaving with him a duplicate of said

663 That all of said duplicates so served on the persons named in this affidavit were in writing and duly signed and sealed by the said circuit court commissioner, whose name is attached to the annexed notice; and further deponent saith not.

(Signed) WILLIAM R. EVANS.

Sworn to and subscribed before the undersigned, a commissioner of the circuit court, duly appointed and sworn by the circuit court of the United States in and for the district of Louisiana, at New Orleans, as witness my hand and seal, at New Orleans, this July 25th, 1878.

(Signed) ANDREW HERO, JR.,
Commissioner of Circuit Court.

UNITED STATES OF AMERICA,
District of Louisiana, Parish of Orleans, City of New Orleans.

Be it remembered that on this the twenty-seventh day of July, A. D. eighteen hundred and seventy-eight, I, Andrew Hero, Jr., a commissioner of the circuit court, duly appointed and sworn as such by the circuit court of the United States in & for the district of Louisiana, at New Orleans, and officiating as such in the city of
664 New Orleans, did call and cause to be and personally appear before me, at my office, No. 17 Commercial Place, in the city of New Orleans, State of Louisiana, Henry Perkins, a resident of the parish of West Feliciana, State of Louisiana, to testify and the truth to say on the part and behalf of the plaintiffs in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the district of Louisiana, in equity, between Marie P. Evans & husband, as plaintiffs, and David Urquhart *et als.*, defendants, No. 7672 of the docket thereof; and the said witness, Henry Perkins, being about the age of seventy-five years and having been by me, said commissioner, first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, and carefully examined, *and* did thereupon depose, testify, and say as follows, viz:

Present: J. R. Beckwith, solicitor for plaintiffs; B. F. Jonas, solicitor for D. Urquhart; T. Gilmore, solicitor for Mesdames Lapeyre, Gasquet, & others, and J. McConnell, solicitor for State National Bank.

J. McConnell, counsel for State National Bank of New Orleans; B. F. Jonas, counsel for D. Urquhart, and T. Gilmore, counsel for Mrs. Lapeyre, Mrs. Gasquet, & others, object to the taking of
665 deposition of witness at this time on the ground that the affidavit filed by the complainant, upon which the commission has been issued by the clerk, does not present any one of the cases which authorize deposition to be taken *de bene esse*, under the rules & practice of courts of equity; and, further, reserve all legal objections to the issuance of the commission herein and the taking of deposition of said witness or any other witnesses.

Direct examination by J. R. BECKWITH, counsel for M. P. Evans & husband:

Question 1. What is your name, age, residence, and occupation?

Answer. Henry Perkins; aged seventy-six years; a resident of West Feliciana parish, Louisiana, and a planter.

Question 2. In what part of West Feliciana do you reside?

Answer. About six miles from the river & from the town of Bayou Sara.

Question 3. How far is your residence from the city of New Orleans?

Answer. About one hundred & fifty miles.

Question 4. Do you know Marie P. Evans, plaintiff herein?

Answer. I do very well. She is my niece.

Question 5. Did you know Stephen Duncan Linton during his lifetime?

Answer. Yes; very well.

Question 6. When did he die?

666 Answer. I think he died—I am not sure of it—he died abroad. I think that it was in 1867.

Question 7. Do you know whether, during his lifetime, he was possessed of a plantation in the parish of Rapides, in this State, sometimes called the Quantico plantation?

Answer. Yes, sir.

Question 8. Do you know how long he owned that plantation prior to his death?

Answer. I do not, sir, but a good many years.

Question 9. Did he run it in 1860?

Answer. Yes, sir.

Question 10. Will you state what relation, if any, Stephen Duncan Linton held to the plaintiff Marie P. Evans in 1860 and up to the time of his death?

Answer. He was her husband.

Question 11. Were you ever on the Quantico plantation?

Answer. Yes; not in 1860, but I was there in 1861.

Question 12. Will you state what time in 1861 you were on the Quantico plantation & for what purpose you went there, in what condition you found the plantation, and whether there was any cotton, either growing or gathered, on the plantation at that time?

667 Answer. I do not recollect the month, but it was in the early part of the season. I was sent there to pay one of Mr. Linton's notes—eleven thousand dollars in gold—to the sheriff. It was in good order, good running condition; everything was comfortable. There was both growing and gathered cotton on the place.

Question 13. Do you remember how much gathered cotton there [illegible]s on the place?

[illegible]nswer. Not in 1861; I do not.

[illegible]uestion 14. Will you state all that you know about the gathered [illegible] on the place then?

[illegible]swer. I was on the plantation in May, 1863, and knew about [illegible]. I do not know if I did know in 1861.

Question 15. How much of the land in 1861 was there planted in cotton?

Answer. I think, sir, that there was about eight hundred acres. There was twelve hundred in all and three or four hundred was in corn.

Question 16. Now, will you tell us, in a narrative form, how you came to go up to the plantation in 1861, and what occurred up there on the plantation?

Answer. The property had been seized for this identical note of $11,000 and was in the hands of the sheriff. I was sent up with the money to pay it and did pay it.

668 Counsel for defendant present objects to this statement of the witness, as it is not the best evidence of the facts sought to be proved in this connection, the records of the seizure being the best evidence thereof, this objection to apply to similar statements of witness without being reiterated.

Question 17. To whom did you pay this money?

Answer. To the sheriff, Mr. Neal.

Question 18. Did you find him in possession of the place?

Answer. I met him in Alexandria. He was not on the plantation himself.

Question 19. Was there any other person representing the sheriff on the plantation?

Answer. I was not aware of it.

Question 20. Was the seizure released upon the payment of this $11,000?

Answer. Yes, sir.

Question 21. Now, will you tell us, in a narrative form, of your next visit to the Quantico plantation, when it was made, for what purpose, what occurred at that visit, and crops and property, such as mules & agricultural implements, you found on the place at that time?

669 Answer. I was on the plantation in April & May, 1863. Everything was still on the place in good running order. The crops was planted and growing, and, as the overseer told me, there was four hundred & eighty-four bales on hand ginned & pressed. I saw the cotton, but did not count it. There was twelve or fourteen hundred bales of cotton in seed unginned. I was on the place again in the fall of 1863, I think September or October. I met Governor Wells on the place. He told me that he had been appointed custodian; that the property had been seized by the bank, and he showed me his authority, written out by Mr. Elgee and signed by Mr. Neal, the sheriff. He said that for fear Mr. Neal might make a mistake in writing out the order Mr. Elgee had written it out himself. I was there in 1864, I think, in March. Gov. Wells was also there, and said that the cotton could not be moved unless that debt was paid, and, as he had transportation & permit would take the cotton to New Orleans if I would allow him two per cent., he paying all expenses, which I agreed to give him to do. I left and came on home. A few days after I heard that

boats had passed Bayou Sara, and I came to New Orleans to know of Gov. Wells what he had done with the cotton, if he had got it away, and how much. I found Gov. Wells speechless and not able to talk, and his family said that he would die that night. I staid with him myself and took charge of his life. I left him in a
670 better condition, but not clearly convalescent, and I sent his carriage after Dr. Stone to take charge of him. Some two weeks afterwards I returned from the country and went up to see Gov. Wells at his home. He was at the dinner table and seemed to be in good spirits. After dining he talked freely and in good life about things generally and gave me an order for twelve bales of cotton. That is all I know about that transaction, about the cotton, until 1865. I heard that there was a lot of cotton on the plantation about being removed, as the bank made the crop of 1864, 1865, & 1866. I went to Alexandria & found three hundred bags of seed cotton on the levee. I reported the condition of that property to the provost marshal, who was then at Alexandria. He took charge of it and sent it to the Treasury agent, Mr. Burbridge, in New Orleans. David Urquhart claimed that cotton as the usufruct for the bank or himself, I do not know which, and the proceeds were paid to him. As he made no reckoning with Linton or any one else, I supposed he paid it over to the bank. I do not know who got it. Burbridge claimed it and Urquhart claimed it.

Counsel for bank objected at the time the statements of the witness were made on the following ground: 1st. The grounds already stated above. 2d. That the statements of the witness are
671 hearsay and conversations with third parties and of his presumptions. Then the witness must state facts. 3rd. That he made statements of the contents of written documents, both public & private, the production of which are called for as the best evidence of their contents. 4th. That this testimony is irrelevant against the bank under the pleadings—these objections to pertain to that which is to be taken without being reiterated. Other defendants reserve like objections.

Question 22. Have you any profession?

Answer. I practised medicine years ago and up to this time.

Question 23. When you went up to the Quantico plantation, in 1863, in what capacity did you go and who did you represent?

Answer. I was looking after the interests of Mr. Linton. In May, 1863, he was on the plantation, and in October he had gone to Europe.

Question 24. Did you see the cotton that was baled and on the plantation at that time? Where was it situated or housed?

Answer. I did. The 484 bales were stored mostly in the gin-[h]ouse, a large building, and a good deal of the seed cotton there, the [re]mainder in the out-houses surrounding.

[Q]uestion 25. How long have you been familiar with ginning [cot]ton?

[A]nswer. Over forty years.

672 Question 26. Were you able to make an estimate from the bulk or quantity of baled cotton as to how many there were?

Answer. Yes, sir.

Question 27. How much did you estimate it?

Answer. From the books of the overseer and the books of the plantation I estimated it at fourteen hundred bales.

Question 28. When you went there in October what was the condition of the new crop?

Answer. It was gone; there was none made; the niggers had gone.

Question 29. Was there any apparent change in the amount of baled and seed cotton on the place?

Answer. That had not been disturbed; it was all there.

Question 30. Who did you find in custody & possession of the place in 1863?

Answer. Gov. Wells.

Question 31. Do you mean J. Madison Wells, the defendant?

Answer. Yes.

Question 32. When you state that the place was under seizure by the bank what bank do you mean?

Answer. The State Bank—State Bank of Louisiana.

Question 33. Do you know whether the process under which it was seized was issued from any court?

Answer. I do not.

673 Question 34. Did you ever see John K. Elgee write?

Answer. No, sir; Wells told me that it was his handwriting.

Question 35. Did Wells hold this property adverse to Mr. Linton?

Answer. Yes; he refused to give it up to him.

Question 36. Were there any mules or farming implements on the place in the fall of 1863 when you were there?

Answer. Very few; they had gone or been got away.

Question 37. Was the plantation under seizure in 1864?

Answer. Yes, sir.

Question 38. Do you know whether it was for the same alleged cause or reason?

Answer. Yes, sir; there had been no change.

Question 39. Do you know if a crop was raised thereon in 1864?

Answer. There was a crop raised in 1864.

Question 40. By whom?

Answer. By Gov. Wells, custodian of the bank.

Question 41. Do you know how many acres?

Answer. I do not.

Question 42. Do you know how much the crop amounted to in bales?

Answer. Don't know that, even.

674 Question 43. Do you know if a crop was grown in 1865 the place?

Answer. Yes sir; there was.

Question 44. By whom?

Answer. By the same party.

Question 45. Wells' custody continued through that year?

Answer. Yes.

Question 46. How far is the Quantico plantation from Red River?

Answer. About 12 or 13 miles.

Question 47. Do you know by what means cotton was transported from the plantation to the river?

Answer. By means of a little railroad that runs through the plantation.

Question 48. Did you ever see any of that cotton grown on the Quantico plantation between 1860 & 1865 in process of transportation to Red River?

Answer. No, sir.

Question 49. Can you give us the ove-seers that you saw on the place in these visits?

Answer. Yes. Gaines. He is dead now.

Question 50. Do you know who owned or controlled that railroad?

Answer. A man by the name of Smith owned it and, I believe, controlled it.

Question 51. To what extent did you have charge or agency of the affairs of Mr. Linton?

675 Answer. I had no authority save being a connection of the family and seeing Mr. Linton very melancholy and much depressed about the loss of his property. I simply acted as a friend of the family.

Question 52. In your conversation with Gov. Wells after his convalescence, in New Orleans, did he state the amount of cotton that had been brought down from the Quantico plantation?

Answer. No, sir.

Question 53. How came he to give you an order for the twelve bales?

Answer. He assigned no reason. I took it without protest, thinking that he intended to make a settlement at some other time, which, however, he never did do.

Question 54. You state whether these twelve bales of cotton were taken by you on account of Mr. Linton as a discharge or full settlement of the remaining interest of Mr. Linton in the cotton on that place.

Answer. It was not.

Question 55. Who was in charge of the bags of seed cotton taken charge of — the provost marshal at Alexandria at your request before he took charge of it?

Answer. The wharf master said that Wells had sent it in and that it was to be shipped on his account.

Question 56. Did you ever hear Wells say anything about that cotton at any time?

Answer. He never mentioned it to me, that I recollect of.

Question 57. Did you ever hear any of the defendants say ng about it?

ver. It occurs to me that Mr. Urquhart said something, but I prepared to say.

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Question 58. Do you know what became of the mules and agricultural implements that were on the plantation at the time of the seizure of the bank?

Answer. I do not.

And to cross-examination by Mr. McConnell, counsel for State National Bank of New Orleans, said witness answered and said:

Cross-interrogatory 1. Did you take a receipt from Sheriff Neal for the $11,000 that you stated you paid him?

Answer. I did not take any receipt, because the papers were returned satisfied by the sheriff.

Cross-interrogatory 2. Who was present when you paid that money to Mr. Neal?

Answer. Mr. Fellows, who kept the ice-house. He is alive now, I think. I do not know his Christian name.

Cross-interrogatory 3. Where does he reside now?

Answer. He lives on a little place somewhere above Alexandria.

Cross-interrogatory 4. In what kind of money did you pay Mr. Neal?

Answer. In gold money; every dollar of it.

677 Cross-interrogatory 5. What was the precise amount you paid him?

Answer. I cannot remember the exact precise amount. It may be a few dollars more or few less.

Cross-interrogatory 6. Are you positive that this was the amount within $100?

Answer. I do not like to come down. I satisfied the debt. It was cancelled.

Cross-interrogatory 7. Did you make him this payment on the plantation itself?

Answer. No; I was in Alexandria. Alexandria was ten or twelve miles from the plantation.

Cross-interrogatory 8. Who was in possession of the plantation at the time you made this payment?

Answer. Mr. Linton was the owner. His overseer was in possession. If there was a keeper I do not know it.

Cross-interrogatory 9. Give me, as near as you can, the date of that payment.

Answer. Spring or summer of 1861.

Cross-interrogatory 10. After you paid that money did you go out on the plantation?

Answer. No, sir.

Cross-interrogatory 11. How soon did you return to the plantation after that time?

Answer. I was there again in 1862.

Cross-interrogatory 12. How long did you remain in 1862?

Answer. Only one night. Mr. Gaines, the overseer, had ch[illegible] for Mr. Linton.

678 Cross-interrogatory 13. You have stated that the bank[illegible] the crops of 1864, 1865, & 1866. How did you know t[illegible]

Answer. Gov. Wells told me so. This is the only way that I knew it.

Cross-interrogatory 14. How do you know that these crops were made in those years?

Answer. Because I saw Gov. Wells there, and he told me that he was making the crops. This is the only way that I know it.

Cross-interrogatory 15. Where was Mr. Linton in 1861, 1862, & 1863?

Answer. In New Orleans mostly. In 1863 he went to Europe. He was on the Quantico plantation for a few days in May, 1863.

Cross-interrogatory 16. Did he go there in 1862?

Answer. I am not prepared to say if he went there or not.

Cross-interrogatory 17. Was he on that plantation in 1861 at all?

Answer. I do not know.

Cross-interrogatory 18. Where did you get the gold you stated that you paid the sheriff, Neal?

Answer. Out of the banks in this city.

Cross-interrogatory 19. Who gave you this gold?

Answer. My brother, Jehu Perkins, the father-in-law of Stephen Duncan Linton.

Cross-interrogatory 20. Out of what banks did you draw the money?

Answer. Out of several banks.

679 Cross-interrogatory 21. Can you give me the names of one or more of these banks?

Answer. I got some out of the Louisiana Bank. I do not know how many or how much. I did not borrow it. I exchanged paper money for it.

Cross-interrogatory 22. Did you give Gov. Wells a receipt for the twelve bales of cotton that he gave you?

Answer. No, sir.

Cross-interrogatory 23. From whom did you get possession of these 12 bales?

Answer. I sold the order which Gov. Wells gave to me to Jno. Mansfield for $2,400, being two hundred dollars a bale, not knowing what trouble I might have to get the cotton.

Cross-interrogatory 24. On whom did Gov. Wells give you the order for the cotton?

Answer. I do not recollect.

Cross-interrogatory 25. Did you not pay any attention as to the person who held possession of the cotton for which Gov. Wells gave you an order?

Answer. I do not think that I did business so loosely as not to pay attention to the name, but I do not recollect it now.

Cross-interrogatory 26. Did you go to this person to find out how by ny bales he had in his possession?

law nswer. I never went to anybody to inquire anything about it; caref sold this paper just as soon as it came into my possession.

truth, Cross-interrogatory 26. Give me, as near as you can, the date I furth of this order of Gov. Wells to you for those twelve bales.

Perkin wer. It was in the spring or very early summer of 1864.

Cross-interrogatory 27. If you got twelve bales from him at that time why did you not pursue the subject and try to get more at that time or afterwards?

Answer. He seemed to have difficulties with Mansfield, and I did not wish to trouble him. Subsequently he did not seem to be talkative, did not wish me to approach him nor to listen to me, and I could get no satisfaction out of him.

Cross-interrogatory 28. Why did you not sue him?

Answer. Because I did not think he had it. I thought the bank had it. He said the bank did; and Mr. Lapeyre said the bank had seized it and would keep on seizing it. Mr. Lapeyre said this in 1866.

Same objections made by counsel of defendants to all of witness' statements as set forth previously (pages 6 & 7).

And to cross-examination by B. F. JONAS, of counsel for Mr. Urquhart, the witness said:

Cross-interrogatory 29. Why did you take that money and go up to Rapides and pay that debt when the seizure was taken out here?

Answer. I did not know where the seizure was taken out;
681 it was in the hands of the sheriff at Rapides parish, and as gold was the only legal tender at that day I intended to make sure work and cancel that obligation.

Cross-interrogatory 30. Did you get the note?

Answer. No, sir; I never saw it. I supposed it was in court.

Cross-interrogatory 31. Did you not know that W. & D. Urquhart were the holders of that note & had taken out that seizure?

Answer. I did not; I thought it was Cohen. I think——

Cross-interrogatory 32. You said that you wanted to discharge that obligation. What obligation?

Answer. It was a mortgage note among a series of notes; the first one due.

Cross-interrogatory 33. Did you get the note or the receipt?

Answer. I got nothing. The sheriff said that he returned the writ as satisfied.

Cross-interrogatory 34. What seizure did you satisfy? From what court was it issued, & who was the plaintiff?

Answer. As above said, it was Mr. Cohen; that is my recollection. I mean the seizure. I know nothing about the court out of which it was issued. I do not know who was the plaintiff; I may have known then, but not now.

Cross-interrogatory 35. Did you satisfy the seizure of the Quantico plantation that was taken out in the spring of 1861 by W. & D. Urquhart out of the 4th district court of New Orleans?

682 Answer. I had nothing whatever to do with it.

And to re-examination by Mr. BECKWITH, counsel for plaintiff, he said:

Interrogatory one. Your statements as to the quantity of

ginned and gathered in 1861—is it from hearsay, or did you see it yourself?

Answer. I saw it myself there in 1861, 1862, and 1863.

Interrogatory two. In your cross-examination you refer to a statement made by Mr. Lapeyre. When, where, and with whom did it occur?

Answer. I mean Mr. Lapeyre, president of the State Bank. It occurred in the banking-house at New Orleans. Mrs. Linton—now Mrs. Evans—had got home from Europe, and was extremely anxious to get the Quantico from under seizure, and was advised by Gov. Hyams, then the attorney of the bank, to see Mr. Lapeyre. I do not know whether he was attorney or not; he professed to be. He, Gov. Hyams, thought that Mrs. Linton could make such terms as would be satisfactory to her. She communicated this information to me and desired me to see Mr. Lapeyre for her. This was some time in the summer or fall of 1866. I told Mr. Lapeyre that Mrs. Linton was anxious to get the Quantico plantation released from seizure. I
683 said — Mr. Lapeyre that she is extremely anxious about this matter. You have seized the cotton and everything on the plantation, worth more than ten times the debt due you. You can certainly afford to release to her the plantation. He said that they had seized it; would seize it; keep on seizing it, and that the only way she could get the place would be to pay thirty-five thousand dollars cash, and I went back and reported to her this.

(Signed) H. P.
his
HENRY x PERKINS.
mark.

And I, Andrew Hero, Jr., commissioner of circuit court, duly appointed & sworn as aforesaid, do hereby certify that the reasons for taking the aforesaid deposition of said witness, Henry Perkins, are because the said witness, Henry Perkins, is ancient and infirm, and because the aforesaid witness, Henry Perkins, resides near Bayou Sara, in the parish of West Feliciana, State of Louisiana, more than one hundred miles from New Orleans, Louisiana, the place where the court in which said suit is pending and to be tried is appointed by law to be held. I further certify that the defendants received due and reasonable notice in writing of the time and place of the taking of said deposition, as appears and is shown by the notice and documents in that behalf hereto annexed. I further certify that on the twenty-seventh day of July, A. D. 1878, at ten o'clock a. m., I was attended at my office by the aforesaid J. R. Beckwith,
684 solicitor for plaintiff-, and Messrs. McConnell, Gilmore & Jonas, solicitors for the respective aforenamed defendants, and by the aforesaid witness, Henry Perkins, who is of sound mind and lawful age, and the witness, Henry Perkins, having been by me first carefully examined and cautioned and sworn to testify the whole truth, did thereupon testify, depose, and say as above written; and I further certify that the foregoing deposition of said witness, Henry Perkins, was reduced to writing by me in the presence of the afore-

said solicitors and said witness and from said witness' statements, and, after carefully reading the same to the said witness, he, said Henry Perkins, attempted to subscribe the same in my presence, but was unable to do so, and having declared that he was unable to write or sign his name, from old age and being infirm, the said witness, Henry Perkins, thereupon subscribed the foregoing deposition in my presence by making his mark thereto. I further certify that I am not of counsel nor attorney for either of the parties in this suit, nor interested in the event thereof, and that I have sealed up these depositions and retained the same in my hands for the purpose of delivering the same with my own hands into the court for which same are taken.

In faith whereof I have hereto set my hand and seal as
[SEAL.] such commissioner of circuit court, at New Orleans, Louisiana, this twenty-seventh day of July, A. D. 1878.

(Signed) ANDREW HERO, JR.,
Commissioner of Circuit Court.

685 Circuit Court of the United States for the Fifth Judicial Circuit, Holding Sessions in and for Eastern Dist. of Louisiana.

To Chas. M. King, United States commissioner, at Shelbina, Missouri, or to any other United States commissioner of said place:

Know ye that, reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to come before you John H. McKee, and him duly examine on the annexed interrogatories on oath touching and concerning certain matters and things in a case now pending in the said court, wherein Marie P. Evans and others are plaintiffs and David Urquhart, The State National Bank, and others are defendants, and the same examination so taken and reduced to writing you certify under your hand and seal, and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 21st day of September, A. D. 1883, and the 108th year of the Independence of the United States of America.

(Signed) F. A. WOOLFLEY, *Clerk.*

686 EASTERN DISTRICT OF MISSOURI, } *ss:*
State of Missouri, County of Shelby, }

Be it remembered that on the — day of September, A. D. 1883, before me, a commissioner appointed by the circuit court of the United States within and for the eastern district of the eighth judicial circuit by virtue of an act entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," at my office, in the city of Shelbina, in the county of Shelby and within the said eastern district of Mis-

souri, between the hours of business, was produced and personally came before me John H. McKee, a witness in behalf of complainant, to depose in a civil cause depending in the circuit court of the United States for the eastern district of Louisiana, held at New Orleans, in the last said district, wherein Mary P. Evans & husband are plaintiffs and Louisiana State Bank is defendant, and whose testimony is alleged to be necessary in said cause in behalf of plaintiff. And the said JOHN H. MCKEE, being of lawful age and
687 sound mind, and being by me first duly sworn on his oath to testify the whole truth touching the matters in controversy in said cause, *and* deposes and says as follows:

Deposition of John H. McKee, a witness produced and sworn as aforesaid, and in answer to interrogatories hereto attached, propounded on the part of complainant.

Interrogatory 1st. When did you reside, in what commercial business, if any, were you engaged, and of what firm, if any, were you a member during the year 1864? Were you a member of the firm of C. A. Weed & Co.?

Answer. In New Orleans; in the factorage or commission business; firm of C. A. Weed & Co.

Interrogatory 2nd. Have you possession of or access to the commercial accounts books in which the affairs of said commercial business during said year 1864 were kept, or do you know where the books are at this time, and, if so, where?

Ans. I have not possession of the books of C. A. Weed & Co.; do not know where they are; have not seen any of them since 1872, at which time I left Louisiana.

Interrogatory 3rd. At the time of the return of the military expidition under the command of Maj. General N. P. Banks from the vicinity of Alexandria, La., in 1864, had you any knowledge
688 of the shipment of cotton on steamboats and transports under the charge of said command? And if you — state what you may know in regard thereto and the source of your knowledge, and was any of said cotton received by your firm.

Ans. Some cotton was brought by Banks' transports to New Orleans from Alexandria, a portion of which was sold by C. A. Weed & Co. in 1864 for account of William Bailey, Walls, & others, whose names I cannot now remember.

In answer to 4th interrogatory deponent says: C. A. Weed & Co. accounted to Bailey, Walls, and others for the cotton sold on this account. My recollection is that Wells' cotton was about one thousand bales, and sold for about 75 cts. per pound; that the last sum paid Wells was about two hundred and twelve or two hundred and fifteen thousand dollars. Wells was very much enraged because the cotton was sold so low, as it rose rapidly as soon as it was known the expedition of Banks failed. This is the only transaction our firm had with Wells.

In answer to the fifth interrogatory of complainant deponent says: I remember that C. A. Weed & Co. sold cotton for J. Madison

689 Wells, which was brought down from Alexandria in transports in 1864. The transaction occurred during my absence from New Orleans, and I cannot recall the details of it, if I ever knew them.

In answer to complainants' sixth interrogatory deponent says: I have already stated all I can recall of the Wells cotton.

In answer to complainants' seventh interrogatory deponent says: I remember J. M. Lapeyre, who was popularly known as the president of the Louisiana State Bank.

In answer to complainants' eighth interrogatory deponent says: I never heard, or if I did I cannot recall, that Lapeyre or any bank had any interest in the Wells cotton our firm sold.

In answer to complainants' ninth interrogatory deponent says: I know nothing further in answer to any of the complainants' said questions except that James E. Zunts, who, with John A. Stephenson, had a contract about cotton with J. M. Lapeyre or the Louisiana State Bank, claimed an interest in all the cotton that came out of Red River during the war.

And further this deponent saith not.

690 In answer to the interrogatories filed herein on the part of the defendant The State National Bank and to the first said interrogatory deponent says: I resided in New Orleans and did a factorage or commission business with C. A. Weed & Co. in 1864, 1865, and a part of 1866. The firm wound up by going into bankruptcy in 1867. From 1867 to 1872, inclusive, I resided in New Orleans; did no regular business. In 1873 I changed my residence to this State, and soon after began farming, and have continued it up to the present time.

In answer to the second interrogatory of said defendant witness says: In the office; E. E. Norton, assignee in bankruptcy.

In answer to defendants' third interrogatory witness says: "I have stated as fully as I can."

In answer to defendants' fourth interrogatory deponent says: "I only knew that in 1864 Lapeyre was president of the Louisiana State National Bank by his being in the bank claiming to be president of it and talking to me as such."

In answer to defendants' fifth interrogatory deponent says: "I cannot state from my own knowledge that the cotton sold for
691 Wells was claimed by the bank, but on my return to New Orleans was told by Weed that Zunts or the bank claimed it."

(Signed) J. H. McKEE.

EASTERN DISTRICT OF MISSOURI, }
State of Missouri, County of Shelby. }

I, Chas. M. King, commissioner for the said district, do hereby certify that the foregoing deposition of John H. McKee was, when taken, there and *this* reduced to entry by me in the presence of said deponent, and by him subscribed in my presence after having been so reduced to entry.

I further certify that the reason for taking said deposition was and is and the fact was and is that the said deponent, J. H. McKee, lives near the city of Shelbina, in the county of Shelby, in the State of Missouri, more than one hundred miles from the city of New Orleans, in the State of Louisiana, where the said civil cause is to be tried.

I further certify that I am not of counsel nor attorney to either of the parties in this suit nor interested in the event of this cause. I further certify that, it being impracticable for me to deliver said deposition with my own hand to the court for which
692 it was taken, I have retained the same for the purpose of being sealed up by me and special-y and safely transmitted by the United States mail to the said court for which they were taken, and to remain under my seal until there opened.

I further certify that the fee for taking said depositions, amounting to ten dollars, has been paid to me by the plaintiff, and the same is just and reasonable for the services performed.

Given under my hand this 29th day of September, 1883.

(Signed) CHAS. M. KING,
Commissioner Aforesaid.

United States Circuit Court, Eastern Dist. of La.

MARIE P. EVANS & HUSBAND
vs.
LOUISIANA STATE NATIONAL BANK. } 7672.

Interrogatories propounded on behalf of complainant to John H. McKee, a witness residing in St. Louis, Missouri, and Chas. A. Weed, of New York, State of New York.

Interrogatory 1st. Where did you reside, in what commercial business, if any, were you engaged, and of what firm, if any, were you a member during the year 1864? Were you a member of the firm of C. A. Weed & Co.?

693 Int. 2nd. Have you possession of or access to the commercial accounts books in which the affairs of said commercial business, during said year 1864, were kept, or do you know where the books are at this time; and, if so, where?

Int. 3rd. At the time of the return of the military expedition under the command of Maj. General N. P. Banks from the vicinity of Alexandria, La., in 1864, had you any knowledge of the shipment of cotton on steamboats and transports under the charge of said command? And, if yes, state what you may know in regard thereto and the source of your knowledge, and was any of said cotton received by your firm.

Int. 4th. If, in answer to the above 3rd interrogatory, you should say that any of said cotton was received by your firm, state by whom it was consigned or on whose account it was to be received and for and on whose account you disposed of the same and to whom you accounted for the proceeds.

Int. 5th. If, in answer to the above 4th interrogatory, you should say that your firm received any of said cotton on account of J. Madison Wells or in which he was interested, please state
694 when the same was to receive the amount thereof in bales or weight; what disposition your firm made of it; if sold, the price received therefor; to whom, the amount of, and how said price was paid by your firm.

Int. 6th. Should you answer the second interrogatory affirmatively please annex to your answer and under oath as to their verity those portions of said commercial books which in any manner relates to the rece-pt and sale of the cotton inquired of in the foregoing fifth interrogatory and showing the account of your firm with said Wells or any other party claiming the same in regard thereto; and if for any reason, which you will please state, you should not annex said originals, please annex copies, duly attested by you, of said portion of said commercial books.

Int. 7th. During the year 1864 were you acquainted with the late J. M. Lapeyre, and whether during said year he held any, and, if so, what, official connection with the Louisiana State Bank?

Int. 8th. If in answer to the foregoing seventh interrogatory you should say that said Lapeyre was officially connected with
695 said Louisiana State Bank, please state w-ether said bank was interested in any of the cotton inquired for in the foregoing fifth interrogatory; and, if yes, state in what said interest consisted and the source of your knowledge in this regard.

Int. 9th. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in the case or either of them, or that may be material to the subject of this your examination or the matter in question in this suit? If yes, set forth the same fully and at large in your answer.

(Signed) J. R. BECKWITH,
Sol. for Compl't.

Filed Jan'y 9th, 1882.
(Signed) T. V. COUPLAND, *D'y Clerk.*

CLERK'S OFFICE, *ss:*

A true copy of the original on file.
New Orleans, September 21st, 1883.

(Signed) F. A. WOOLFLEY, *Clerk.*

696 United States Circuit Court, Eastern Dist. of Louisiana.

MARIE P. EVANS & HUSBAND
vs.
D. URQUHART and STATE NAT. BANK *et als.* } No. 7672.

The State National Bank, one of the defendants herein, having been served with a copy of interrogatories propounded by the complainants to John H. McKee and Chas. A. Weed and notified to file

cross-interrogatories thereto, now, first reserving all legal exceptions, they especially except to the said interrogatories, and more particularly the sixth, and to any and all answers thereto, so far as the same may attempt to state the contents of the account books of C. A. Weed & Co. or any part thereof or to give portions of the original thereof or copies of portions or the whole thereof, on the ground that the account books of C. A. Weed & Co. are inadmissable as evidence against them for any purpose, being *res inter alias acta*, being the acts and writings of third parties done out of the presence of defendants, being unsworn, and to which defendants were not parties and by which they cannot be affected.

697 If the foregoing objections are overruled, then and only in that event defendants further except that the said account books themselves as a whole are the best evidence of what they purport to contain, and defendants are entitled to their production and to an inspection and examination thereof, and cannot be made to accept either portions of the originals or copies thereof or any part thereof.

Not waiving the foregoing exceptions and objections, but insisting on the same and subject thereto and in obedience to the order of court requiring them to file cross-interrogatories herein within three days, the said defendants now file the following cross-interrogatories, to wit:

First. State where you have resided and done business continuously during each year since 1864 down to and including the present year.

Second. Where did you last see the account books of C. A. Weed & Co.? Were they not all surrendered when that firm went into bankruptcy; and, if so, when and with whom were they then deposited?

Third. If you answer affirmatively to any of the matters inquired of in any of the interrogatories-in-chief propounded to you,

698 please to state precisely the portions of such answers that are made upon what you know personally and what you heard from others, and in every instance that you say you had personal knowledge state precisely how you obtained such personal knowledge, from whom, how, when, and where.

Fourth. Can you say positively that Mr. J. M. Lapeyre was president of the Louisiana State Bank in the year 1864? Do you know when he became president and when he ceased to be such? State precisely what you know on the subject.

Fifth. If you state, as inquired of, that the said bank was interested in said cotton, state precisely how you know it, from whom, when, and where did you leave it. State precisely, if you please, as to the persons, dates, places, &c.

(Signed) J. McCONNELL,
Sol. for State Nat. Bank.

Jan'y 13th, 1883.

Filed Jan'y 13th, 1883.

(Signed) F. V. COUPLAND, *D'y Cl'k.*

CLERK'S OFFICE, *ss:*

A true copy of the original on file.
New Orleans, September 21st, 1883.
(Signed) F. A. WOOLFLEY, *Clerk.*

699 *Copy from Bankruptcy, Urquhart.*

U. S. Circuit Court, Eastern District of Louisiana.

MARIE P. EVANS *et als.*
vs.
STATE NATIONAL BANK *et als.* } No. 7672.

Offered in evidence by complainants March 8th, 1884.
(Signed) F. A. WOOLFLEY, *Examiner.*

SCHEDULE A (4).

Liabilities on Notes or Bills Discounted which Ought to be Paid by the Drawers, Makers, or Acceptors.

N. B.—The dates of the notes and bills and when due, with the names, residences, and the business or occupation of the drawers, makers, or acceptors thereof, are to be set forth under the names of the holders. If the names of the holders are not known the name of the last holder known to the petitioner should be stated, and his business and his place of residence; the same particulars as to notes or bills on which the petitioner is liable as endorser.

Reference to ledger or voucher. Residence of drawers.	Names of holders as far as known.	Place of residence and occupation.	Place where contracted.			Amount.	Nature of liability; whether same was contracted as co-partner or joint contractor or with any other person; and, if so, with whom.
	Louisiana State Bank:			*Month.*			
Paris	S. D. Linton	N. O.; bank	N. O.	12	13th Feb'y, 1862	10,833 33	Endorsers on promissory note as copartners.
"	S. D. Linton	" "	"	"	13 " "	10,833 33	do. do.
"	S. D. Linton	" "	"	"	13 March, "	10,833 33	do. do.
"	S. D. Linton	" "	"	"	18 " "	10,833 33	do. do.
"	S. D. Linton	" "	"	"	13th Jan'y, "	10,833 33	do. do.
"	S. D. Linton	" "	"	"	13 " 1863	10,833 33	do. do.
"	S. D. Linton	" "	"	"	18 March, "	10,833 33	do. do.
"	S. D. Linton	" "	"	"	13 " "	10,833 33	do. do.

(Signed) DAVID URQUHART,
Do. WM. URQUHART, *Petitioners.*

Oath to Schedule "A."

UNITED STATES OF AMERICA, } ss:
District of Louisiana, }

On this 17th day of January, A. D. 1868, before me personally came Wm. Urquhart & David Urquhart, the persons mentioned in and who subscribed to the foregoing petition and schedule marked "A," respectively, and who, being by me first duly sworn (or affirmed), did declare the said schedule to be a statement of all their debts, &c., in accordance with the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2nd, 1867.

(Signed) CHAS. CLAIBORNE, *U. S. C.*

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF LOUISIANA, CLERK'S OFFICE.

I certify the foregoing to be a true extract from the original on file in the bankruptcy proceedings entitled I- the matter of W. & D. Urquhart, bankrupts, and numbered 138 on the docket of above court.

Witness my hand and seal of said court this 8th December, 1883, at New Orleans, La.

(Signed) JOHN DEVONSHIRE, *Clerk.*

700 *Note of Evidence by State National Bank. Filed 26th May,* 1885.

MARIE P. EVANS *et al.* }
vs. } No. 7672.
DAVID URQUHART *et al.* }

Note of the testimony offered in behalf of The State National Bank, one of the defendants in the above-entitled cause.

Testimony of B. T. Jonas.
" David Urquhart.
" Charles L. C. Dupuy.
" Samuel H. Kennedy.

Record Book E, Louisiana State Bank.

Extract from record of proceedings board directors La. State Bank, folios 235, 236, 237, containing, with other proceedings, special military order No. 138, protest of the board, minute of the opening and closing meetings of the board of military liquidators.

Important minutes of proceedings of the military commissioners of the Louisiana State Bank from 18th June, 1863, to February 3, 1866.

Certified copy act of mortgage from S. D. Linton to W. & D. Urquhart before T. Guyol, notary, December 27th, 1859, together with the eight mortgage notes described in said act for $10,833.33⅓ each, falling due as follows: Four in the year 1862 and the other four in the year 1863, and fully set forth and described in the peti-

tion in suit No. 17703, brought Sept. 26, '66, by said bank against said S. D. Linton.

701 The testimony of J. Madison Wells, taken under commission by the complainant, but which, not being offered by complainant, is offered *ex necessitate* by defendant.

The testimony of J. McConnell.

Exhibit Dupuy No. 1; deed of sale, Dupuy to Robinson, 22d March, 1857, & ratification therein of the complainant.

Record of suit of Marie P. Evans *vs.* The United States, No. 3107, before the claims commission; opinion and judgment of same and testimony of Mrs. Marie P. Evans taken in said suit; also testimony of Nemours Bienvenu taken in same suit, No. 3107; also

Record No. 14665, 4th dist. court of New Orleans.

Do.	14708,	do.	do.	do.
Do.	14669,	do.	do.	do.
Do.	14846,	do.	do.	do.
Do.	17703,	do.	do.	do.

Transcript of succession of Stephen D. Linton, all proceedings & contents of said bound volumes of 403 written pages.

Letter, Stephen Duncan Linton to the liquidating commissioners La. State Bank, dated New Orleans, October 28, 1865, marked Complainant'- No. 2.

Letter, dated New Orleans, Sept. 7, 1866, from Mrs. Evans to the La. State Bank, marked Complainant'- No. 1.

The bound transcript of suit No. 14665, in 4th dist. court of New Orleans, of 21 pages, with all proceedings & papers then filed as part thereof; exhibit marked B. F. Jonas No. 1, being certified copy of record No. 14665, in 4th dist. c't of New Orleans; the answer of the bank to the bills of complaint herein and the answers under oath of the bank to the interrogatories therewith filed.

All agreements filed & admissions in the record.

(Signed) J. McCONNELL,
Sol. for State Nat'l Bank.

702 Circuit Court of the United States, Fift- Circuit, Eastern District of Louisiana.

MARIE P. EVANS *et als.*
vs.
DAVID URQUHART *et als.*
} No. 7672.

Testimony taken on behalf of The State National Bank, one of the defendants in the above entitled and numbered cause, under the 67th rule of practice of courts of equity of the United States, before F. A. Woolfley, special examiner duly appointed by the court afor-said to take the depositions of the witnesses on behalf of said defendant.

NEW ORLEANS, *November 28th*, 1881.

Present: James McConnell, Esq., solicitor for the State National Bank; E. H. Farrar and J. R. Beckwith, Esqrs., solicitors for complainants.

703 B. F. JONAS, sworn on behalf of the Louisiana State Bank, defendant, says:

By Mr. MCCONNELL:

Q. You are a representative of the State of Louisiana in the Senate of the United States at this time?

A. Yes, sir.

Q. When do you expect to leave this city?

A. On We-n-sday, November 30th.

Q. You are a member of the bar of the city of New Orleans?

A. Yes, sir.

Q. How long have you been practicing at this bar?

A. I have been practicing here since 1856—a period of twenty-five years.

Q. Were you practicing by yourself or in connection with any firm?

A. I have been practicing in connection with Governor H. M. Hyams from 1856 to the date of his death, in 1875.

Q. Continuously from 1856?

A. Yes, sir.

704 Q. Being shown the record No. 14665 of the docket of the fourth district court of New Orleans, entitled David Urguhart *versus* Stephen Duncan Linton, the witness is asked to state what knowledge he has of that suit and what was done in it, beginning with its inception and going to its close.

Mr. Farrar, for complainants, objects to any testimony with reference to the record of any matters that appear upon the face of the same, as the best evidence is the record itself.

Thereupon counsel for the Louisiana State Bank offers said record in evidence and furnishes the examiner with a certified copy thereof, which certified copy is now produced and offered in evidence and is marked B. F. Jonas No. 1.

Q. State what your knowledge is of the suit above referred to and what was done in it, beginning from its inception and going to its close.

Same objections as above stated by Mr. Farrar.

705 A. My firm had nothing to do with the original institution of this suit in 1861, but in October, in 1865, we filed a supplemental petition for an order of seizure and sale, which I find here. I obtained the writ of seizure and sale, which was directed by me to the sheriff of the parish of Rapides, and I also afterward obtained, on the 31st October, 1865, an order of seizure directing the sheriff of the parish of Orleans to seize in the same case sixty-five (65) bales of cotton within the jurisdiction of the court. The writ and order of seizure and sale was sent to the sheriff of the parish of Rapides and the order for the seizure of the cotton was issued to the sheriff of this parish and the cotton was seized. The matter was afterwards settled by the plaintiff in the suit, David Urquhard, and the parties having the possession of the cotton, who, as far as my memory serves

me, was Mr. Henry Perkins and the Treasury agent of the United States, General Burbridge. The cotton was seized in the pos-
706 session of J. W. Burbridge and Co. The matter of the seizure of the cotton was shortly afterwards settled and we were instructed to dismiss that seizure. We were also ordered to discontinue the proceedings and dismiss it.

Q. From whom did you receive that order to discontinue that suit?

A. From David Urquhart, our client—both the order to institute the suit and to discontinue it.

Q. In that suit No. 14665, in any of the proceedings connected with it by the firm of Hyams & Jonas, was the Louisiana State Bank a party, either directly or indirectly?

A. It was not. We had nothing to do with the Louisiana State Bank. They were not a party to the proceedings as far as — were informed.

By Mr. FARRAR:

Q. That is, they were not a party so far as you were informed?

A. Well, we had no knowl-dge of the Louisiana State Bank in the matter. The suit was instituted in David Urquhart'- name and dismissed at his instance.

By Mr. MCCONNELL:

707 Q. Was there any other counsel besides Hyams & Jonas, to your knowledge, that had anything to do with those proceedings after you went into the case so far as the plaintiff was concerned?

A. Nobody whatever, except our associate counsel in the parish of Rapides, Judge Manning, to whom we sent the order of seizure and sale to have it executed, he being employed by us as associate counsel.

Q. You say the Louisiana State Bank was not, to your knowledge, a party to that suit, directly or indirectly?

A. It was not.

Q. When the papers were brought to you to file the petition and supplemental petition for executory process, which you filed on the 6th October, 1865, who employed you to do that?

A. Mr. David Urquhart.

Q. Did you know the Louisiana State Bank in the transaction at all?

A. I did not.

Q. And no one representing the bank?

—. —.

708 Q. When you filed the proceedings for the seizure of the sixty-five bales of cotton on the 31st October, 1865, who was the party that came and employed you to do it?

A. Mr. David Urquhart.

Q. Did the bank have anything to do with it—the Louisiana State Bank?

A. Nothing. I never heard of the bank.

Q. You never heard of the bank in that connection?

A. No, sir.

Q. In whose handwriting is this original motion for the seizure of the sixty-five bales of cotton?

A. In the handwriting of my partner, Governor Hyams.

Q. At that time that you made that seizure where was J. Madison Wells, and what was he?

A. He was in the city of New Orleans, and Governor of the State.

Q. When the suit was compromised and settled, I understand you to say, it was settled on the one part by David Urquhart and on the other part by Mr. Henry Perkins, or by whose authority was

709 it compromised and settled?

A. It was compromised, so far as we were concerned, by Mr. Urquhart. What the nature of the compromise was I do not know. The suit was settled, and Mr. David Urquhart instructed us to rel-ase the cotton. What the terms of the compromise were I do not know, but Mr. David Urquhart paid us a fee of five hundred dollars.

Q. Had the bank anything to do with the paying of the fee?

A. No, sir; it was paid on Mr. David Urquhart's check, and receipted for to him. We had nothing to do with the compromise; we were instructed it was made, and to discontinue the suit.

Q. Why did you get this motion for the seizure of the cotton that came from the Quantico plantation; why did you take that proceeding in the suit No. 14665, rather than bring a separate action for it?

A. Because we considered that on that plantation all that

710 was on it, movable and immovable, was under seizure in that suit No. 14665 since 1861. The property had been in the hands of a keeper, and we took the ground that this had been taken from the custody of the keeper. We therefore claimed the right to sequester it. We got Governor Wells to join in the proceeding. He was the keeper. The motion was made jointly, in the name of David Urquhart, creditor, and Mr. Wells, keeper, who claimed possession of that cotton.

Q. I understand you; you pursued this cotton that was raised on the Quantico plantation at that time—at that date—as cotton that legitimately belonged to the seizure in this suit?

A. Yes, sir.

Q. You had no communication, then, with the Louisiana State Bank with reference to that seizure?

A. None whatever. At that time we had no business with the Louisiana State Bank whatever; we were not counsel for them.

711 Q. Was there anybody else that represented the Louisiana State Bank as counsel that confer-ed with you?

A. Nobody at all.

Q. You had not been confer-ed with that the bank had any interest in it at all?

A. No, sir; none whatever, and I had no reason to think so.

Q. I find in these papers, among others, a paper making a state-

ment of the case, signed by J. Madison Wells and David Urquhart. Will you please look at it and state in whose handwriting that paper is? It was filed Oct. 31st, 1865.

A. It is all in the handwriting of my partner, Governor Hyams, except that portion on second page where it is marked. That marked portion is in my handwriting. The signatures are J. Madison Wells and David Urquhart, which signatures I recognize.

Q. These signatures of David Urquhart and J. Madison Wells you recognize well and are familiar with?

A. Yes, sir; I suppose it was signed in my presence, but I don't know.

712 Q. I see at the bottom of this paper the words "The writ and seizure and the return of the sheriff of Rapides, marked 'A,' and the sheriff order to Governor Wells to take charge of and keep the cotton, marked B." Did you have these papers; were they at the time that was *was* written in your possession?

A. We had them at the time; I had them with the petition. I remember when we had them.

Q. What became of them?

A. I could not tell; I have not seen that record for a great many years; it was lost for a long time. The papers may have been taken out and sent to Rapides, where the proceedings were instituted, and may have been destroyed when the court-house was burned. I have not seen them for years. I see in this paper, what purports to be an extract from the sheriff's papers, the following words—I will read: "And authorization of Sheriff William J. Neill to Major, now Governor, J. M. Wells to take charge for him of all cotton on and

713 personal effects on the Linton plantation, and he has authority further to keep all intruders from off the land. August 21st, 1863. Signed W. J. Neill, sheriff." Will you please look at that and state in whose handwriting that is in and whether or not that is an extract from the sheriff's return?

A. Yes, sir; it is in the handwriting of Governor Hyams. I have no doubt it was quoted strictly and minutely, as he was in such things very careful. He is dead now. I remember myself that there was such a paper, and that the sheriff gave such instructions to Governor Wells. I don't know the verbiage. I know it is quoted correctly.

Q. When was the first legal proceedings ever taken, to your knowledge, by the Louisiana State Bank with reference to the Quantico plantation? Look at this record and see if that will not refresh your memory.

714 Witness is here shown the record No. 17703 of the docket of the fourth district court of the parish of Orleans, and he answers:

A. We were employed by the Louisiana State Bank to bring a suit against Stephen Duncan Linton on eight protested notes, bearing mortgage on the Quantico plantation, and we filed that suit in the fourth district court of New Orleans on the 26th September, 1866.

The suit is contained in the record No. 17703 of the docket of that court. That suit was for the sum of 86,666.62.

Q. That was on eight promis-ory notes?

A. Yes, sir; claiming interest from the respective maturity of each of the promis-ory notes and asking that the mortgage be recognized and enforced.

Q. Have you any knowledge of any other proceeding taken by the Louisiana State Bank or in which the Louisiana State Bank was a party, directly or indirectly, prior to the institution of that suit No. 17703, on the 26th September, 1866?

A. None whatever. These notes were put into our posses-
715 sion shortly after they were acquired by the bank for the purpose of obtaining judgment upon the mortgaged property. They had never been in suit before. The three notes in the suit No. 14665 were never the property of the Louisiana State Bank.

Q. How long did you have the eight notes which you describe in your petition in suit No. 17703 before you filed the suit?

A. Well, a very short time. I don't know that I have any knowledge of that particularly. I think we probably had them in our possession some months. I could tell exactly by looking at my docket.

Q. You state it was but a short time?

A. Yes, sir; a short time. We did not have possession of them until 1866.

Q. You brought suit upon them shortly afterwards?

A. Yes, sir.

Q. You did not have these notes in your hands in connection with David Urquhart and his suit or any other suit?

A. No, sir.

716 Q. Is there any other lawyer in the city of New Orleans that had anything to do with collecting this debt for the bank from the Quantico plantation?

A. After these notes were placed in our hands I am not aware of any proceedings begun in suit No. 14665 that the bank had anything to do with. These notes held by the Louisiana State Bank in suit No. 17703 belonged, all during the war or a portion of the war, to the Louisiana —. I know they were acquired by the bank a very short time before they were put in our hands for collection by either a settlement or sale on that pledge.

Q. You have testified that you got out this seizure for some sixty-five bales of cotton that came from the Quantico plantation. Have you any knowledge whatever of any other cotton or property that has ever come from the Quantico plantation to the city of New Orleans besides that sixty-five bales of cotton?

A. None whatever.

Q. Have you any knowledge of the Louisiana State Bank
717 ever, either directly or indirectly, receiving any cotton or property or the proceeds of any cotton or property that came from the Quantico plantation at any time?

A. I have not.

Q. It is charged in this bill that there was a conspiracy on the part of the bank with Mr. Urquhart and others by which cotton or

its proceeds received from this Quantico plantation was not accounted for. I will ask you if you have any knowledge from any conversation with Mr. Urquhart which would go to show that the bank had any interest whatever in any cotton or the proceeds of cotton that came from that plantation, or that the bank did ever receive such cotton or its proceeds.

Mr. Farrar objects to this evidence on elementary grounds; that conversations between codefendants or their counsel in relation to the matter at issue is not evidence or admissible as such on
718 their joint behalf. It is otherwise objectionable as hearsay.

Q. (Repeated.) It is charged in this bill that there was a conspiracy on the part of the bank with Mr. Urquhart and others by which cotton or its proceeds received from the Quantico plantation was not accounted for. I will ask you if you have any knowledge from any conversation which would go to show that the bank had any interest whatever in any cotton or the proceeds of cotton that came from that plantation, or that the bank did ever receive such cotton or its proceeds.

A. I have not. On the contrary, we were informed by Mr. Urquhart that he had obtained an order of seizure and sale of the Quantico plantation at the beginning of the war in the suit No. 14665, and that that seizure was still pending; that some cotton which should be upon them in the possession of the receiver had been extracted by the receiver and was brought to the city, and was either in the possession of Henry Perkins or the Treasurer of the United
719 States through Mr. Burbridge, and held by Burbridge & Co. or somebody else, and he claimed that cotton as his own and claimed to seize it. We heard nothing of the Louisiana State Bank or anybody else there, and had no reason to believe that anybody was interested in it except Mr. Urquhart or the firm of W. & D. Urquhart.

Q. In the original bill in this case there is an allegation as follows: "That during the time of said occupation by the said David Urquhart and on or before the twenty-first day of August, 1863, the defendant The State National Bank of the City of New Orleans, then known as the Louisiana State Bank, joined with the said defendant, David Urquhart, in the possession and occupancy of the said above mentioned and described piece or parcel of land and continued in such possession and occupancy until about the — day of January, 1869." Have you any knowledge that the bank ever did, as is here particularly charged, join with the said defendant, David Urquhart?

720 Counsel for the complainants objects to this question for all the manifest reasons for which it is objectionable—that it is a question of the defendants to their own witness.

A. I know nothing of the kind. I know the Louisiana State Bank, through our firm, instituted a suit in 1866 for the purpose of enforcing their mortgage upon the plantation.

Q. You know of no proceeding taken by the bank in 1863?

A. I know of no proceeding taken by it in 1863. I have never seen the record of it.

Q. Do you know of any fact that would go to show that it joined with David Urquhart in 1863 in the possession and occupancy of the above-named plantation?

A. No, sir. I know of one fact that would lead me to doubt it very much, and that is because David Urquhart was in the Confederate army in 1863 and the Louisiana State Bank was in New Orleans.

Q. What time did Mr. David Urquhart return to the city
721 of New Orleans after the close of hostilities?

A. He returned early in 1865, after the close of the war, about the same time, I think, as I did—about May or June, 1865.

Q. Where was he in 1864?

A. In 1864 he was on the staff of General Bragg, at Richmond, in the Confederate service. He was probably in Richmond at that period.

Q. What was the standing of the house of W. & D. Urquhart in this city in 1861? I mean the commercial standing.

A. It stood exceedingly well. They done a very large business and had a wealthy class of customers.

Q. As to Mr. David Urquhart himself, did he hold any position connected with any financial institution here until recently; if so, what was it, and when did he cease to hold it?

A. One member of his firm, either he or his brother, was president of the Louisiana Savings Institution until its failure, some time in 1879.

722 Q. When you instituted this suit No. 17703, on the 26th September—I see here the words "service accepted"—who was the service accepted by? Look at it.

Mr. Farrar, for complainants, objects because the record shows that fact, and also objects to any testimony that is not in the record.

Mr. McConnell, for The Louisiana State Bank, defendant, offers in evidence record 17703 of the fourth district court of New Orleans, entitled The Louisiana State Bank *versus* S. D. Linton.

Mr. Farrar, for complainant-, objects because it is an original record, and that an original record of one court cannot be offered in evidence in another. There is no certificate of the clerk that this is the entire record, and this may simply be a bundle of papers from that court.

Q. Are you looking at the original petition filed in that case?

A. Yes, sir.

723 Q. Do you know of any notice there of service being accepted?

Mr. Farrar, for complainants, objects because the record speaks for itself.

A. I notice the signature of Mary Perkins, signing as provisional administratrix of S. D. Linton, who was interdicted, and S. D. Linton and P. H. Morgan, attorney for S. D. Linton. These signatures

were affixed in my presence. I wrote the petition and obtained their acceptance of service.

Q. That is the signature of Mary Perkins Linton, provisional administratrix of S. D. Linton, and signed below by P. H. Morgan, attorney, that he thereby accepts service?

A. Yes, sir.

Q. Where was it signed?

A. In the city of New Orleans, either at Judge Morgan's office or he may have come to ours, she being with him.

Q. You did not go to her house to get her signature?

A. No, sir.

724 Q. Was Judge Morgan with her when she signed it?

A. He was. She signed it under his advice.

Q. Did you ever see her write her name at any other time?

A. No, sir.

Q. Had the legislation of the State of Louisiana in 1861 anything to do with the suspensation of the sale of that plantation, the order for which sale was issued in suit No. 14665?

A. I think it very likely. I do not know, but my impression is that the convention passed an ordinance suspending all forced sales.

Q. Look at the paper you have already testified to, filed the 31st October, 1865, in suit No. 14665, and state why the writ of sale was not executed.

Witness reads from the papers handed to him, filed the 31st October, 1865, and states the reason why the sale did not take place as follows:

"Sale having been stayed by the general stay law, passed in 1861." That is in my handwriting.

725 Q. What general stay law have you reference to?

A. The general stay law of the State of Louisiana.

Cross-examined by Mr. FARRAR, for complainants:

Q. Was it at all incumbent on Urquhart to inform you of the relations between him and the State National Bank or the Louisiana State Bank in any of the transactions that may have taken place between them in 1861, 1862, 1863, 1864, and 1865 & previous to the filing of this amended petition of yours?

A. No, sir.

Q. Might not there have been relations existing between them of which you know nothing?

A. There might.

Q. Do you not know that all the notes belonging to the series of notes under the mortgage given by Mr. Stephen Duncan Linton to W. & D. Urquhart were pledged to the Louisiana State Bank prior to the war?

A. No, sir; I do not. I know the three under which the
726 proceedings were taken were never pledged either before or since or during the war, because I know we held them for the holders. Of these one belonged to Mrs. De Boigne, sister of Mr. Urquhart; another belonged to the Bank of Louisiana, and the

third belonged to Dr. Bush, of Rapides parish. We held two of them to collect for these parties. Dr. Bush never pressed it. He held the note himself. The others were pledged to the Louisiana State Bank, but at what time I do not know. I know they were in pledge to the bank at the close of the war, because I know the pledge was sold and the notes passed into the hands of the bank, and they were placed in our hands for collection. When they were pledged I do not know.

Q. Where were these notes at the time this suit——

A. Which notes?

Q. These mortgage notes—the three first notes.

A. In the clerk's office of the fourth district court during the whole war, from 1861 to 1865, when we revived the suit, at the time we filed the supplemental petition.

727 Q. How is it they belonged to these three persons?

A. They did, but for convenience, I suppose. They brought suit in the name of Urquhart—at least afterwards two of them were placed in our hands; but during all the war, from the prosecution of that suit by Elgee until 1865, they were in the clerk of the court's hands until we revived it. We were told that one belonged — Baroness De Borgnee, and we accounted to her. Dr. Bush received the same amount as the other holders of the notes, and the dividends were subsequently contested in the courts. The Bank of Louisiana also collected theirs. We represented the mortgagee for Dr. Bush. Doctor Bush profited by the litigation, but did not take part in it. He got his dividend.

Q. You do not know whether the Louisiana State Bank had any agreement or understanding with Mr. Urquhart with reference to the character of this seizure made by him upon the notes due at that time?

728 A. No, sir. I do not.

Q. There may have been such an agreement?

A. I know nothing about it.

Q. You would know nothing about it?

A. I was not Mr. Urquhart's counsel at the time. It was Mr. D. Choiseul was counsel for Mr. Urquhart.

Q. It is not very likely that if the Louisiana State Bank held all the rest of the series of notes in pledge and were subsequently falling due and as a sale under the mortgage of one set of the series of notes would be a sale upon the whole as to the whole series—is it not very likely that an agreement of that sort would be made by the bank, who held all the other notes in pledge, with Urquhart for this suit to be instituted for the benefit of all parties?

A. I don't know that for this reason, that the other note had not fallen due. Some did not fall due for years after. Mr. Linton was considered a wealthy man, and the Urquharts, who held the

729 first notes, were rich, so I cannot say that the Louisiana State Bank, if they held the note at that time—which I do not know—could have the least anxiety as to their collection. At that time in 1862 nobody had any doubts about the result of the war, and persons put as much confidence in wealthy persons as they

do to-day. Nobody apprehended by the destruction of the war the destruction of slave property so as to effect its value. Mr. Linton, I suppose, had enough slaves on his plantation to pay his debts, as he was considered a very wealthy man at that time, but I have every reason to believe about these three notes belonging to the parties that I have indicated from the precise date of this suit or very shortly afterwards. Mr. Urquhart may have borrowed the three notes from these parties for the purpose of bringing this suit—that is, from Mrs. De Boigne, the Bank of Louisiana, and Dr. Bush, because immediately after the end of the war we were informed of the ownership of these notes by these people.

730 By Mr. BECKWITH, for complainants:

Q. What parties to this record did you represent?

A. I filed an answer for Mr. Urquhart.

Q. I understand you to say that at the time of the institution of this suit, No. 14665, in 1861 you knew nothing whatever or had anything to do with this litigation, directly or indirectly.

A. No, sir.

Q. You knew nothing, then, connected with the facts of the notes or their ownership until your subsequent employment after the war?

A. No, sir.

Q. You had no means of knowing who the *the* ownership of the three notes were?

A. No, sir.

Q. Until you were retained in 1866?

A. Until they were placed in our hands.

Q. I do not know but I misunderstood you as to what you believed in 1866 to be the ownership of these three notes; one, I understand you, was owned by the Bank of Louisiana, one by Mrs. De Boyne, and the third, by whom?

A. Doctor Bush, in the parish of Rapides.

Q. And that they were the three notes involved in this first seizure?

A. Yes, sir; the same three notes.

Q. How did it happen that Bush was not involved in the litigation?

731 A. He had no part in the litigation; but nothing is more common. If Bush held that note he held it with Mr. Urquhart's indorsement, and he may have held it as pledgee, and may have put it into David Urquhart's hands to enable him to sell this property, Urquhart holding the other seven notes.

Q. How do you overcome the presumption of ownership of Urquhart?

A. Whether Urquhart owned them in 1861 I do not know; but in 1865 other parties owned them, because they came to us and had relations with us as clients.

Q. From whom did you get your directions to institute this proceeding?

A. We got that from David Urquhart.

Q. Was that before or after your connection with the several owners?

A. It was before.

Q. It was only after David Urquhart told you to go and put in a supplemental petition that you learned he was not the owner of these notes?

A. Yes, sir; he was not the owner of them until then.

Q. When did you first learn that there was cotton seized
732 on that plantation and put under the keeperage of Wells?

A. We knew nothing of the matter until they were placed in our hands in 1865. Governor Hyams may have known it, because he knew up the country, but I did not.

Q. Do you remember to have seen the original writ of seizure and sale with its return on it?

A. Yes, sir; I remember to have — it. I remember to have seen the instruction- from Neill to Wells.

Q. Do you remember now whether the return of the sheriff disclosed the fact that any considerable property immoveable in character and immoveable by destination had been seized under that writ?

A. I do not remember these precise details, but I suspect everything—the plantation, slaves, moavables, growing crops, and everything subject to the mortgage—was seized.

Q. Was there any allusion or statement as to the cotton that there was?

A. I do not remember. It was very likely after the seizure was made. It was while there was a growing crop.

Q. Do you remember to have made any enquiry, either on
733 your own instigation or upon the instigation of Urquhart, as to what became of this property?

A. I remember asking various parties from Rapides, as we felt an interest after we got possession of the notes in collecting this debt. I had no information of a specific character, but I had general information that the greater part of the movable property was taken off by Mr. Linton during the war. I heard that from general report.

Q. You seem to have some cont-act with J. Madison Wells?

A. Yes, sir; before the war he was our client, and even after the war.

Q. Do you remember as to the authority of Wells under the seizure in 1861 to get the custody of the property on that plantation, for he seems to have joined in swearing to the motion for an *alias* or supplemental writ? Do you remember enquiring of the keeper of this property what had become of it?

A. Of Wells?

Q. Yes.

A. I remember he said that this cotton had been carried
734 away from this place, these sixty-five bales.

Q. It was the only sixty-five bales that you knew of?

A. Yes, sir.

Q. Then it was only the sixty-five bales of cotton that you were in pursuit of in this suit?

A. Yes, sir.

Q. Did you make any enquiry of Wells as to what became of the balance?

A. I do not remember that we did. Wells was away himself during a large portion of the time. He came to this city in 1864.

Q. Was it not somewhat extraordinary or a somewhat extraordinary occasion for it that in the supplemental proceedings and motion filed by Urquhart that Wells should have joined in it?

A. It was done under our advice. We wanted to claim that for Urquhart as plaintiff and creditor and the keeper. We considered the keeper had a right to that cotton. You know at that time how difficult it was to get cotton. It was brought here in the hands
735 of Treasury agents, and would be smuggled out and sold, and we wanted to get it by sequestration.

Q. Do you remember just what the particular reason was for this rather curious restraining J. Madison Wells in this motion?

A. Because we considered him the legal keeper of this cotton.

Q. Why did you not proceed in the name of the sheriff?

A. The sheriff was dead long before and his successor come into office. We proceeded in the name of the keeper. We had to proceed immediately, and the sheriff was not here. If we waited the cotton would have been gone.

Q. Was there any suggestion made by Wells or anybody at the time that the possible authority of the keeper might drop with the sheriff?

A. No, sir; I think not.

Q. Did J. Madison Wells come to your office?

A. Yes, sir. We sent for him. He came to our office and signed this petition or motion and to make the jurats or one of them.

Q. Do you remember whether or not there was connected
736 with the return of the sheriff to the original writ of seizure and sale the document by which Sheriff Neill appointed Wells custodian?

A. I think there was. I think I saw that document, and my impression is it was connected with the return.

Q. It appears that the *alias* order of seizure and sale was taken out and sent up to Rapides?

A. Yes, sir.

Q. Do you remember who was the sheriff up there then?

A. No, sir; I do not.

Q. Do you remember who transmitted that order?

A. It was sent by us to Judge Manning.

Q. By mail?

A. Yes, sir; by mail.

Q. Do you know whether it was ever levied or not?

A. I am pretty certain it was. I think the return is here.

Q. Was that *alias* writ predicated upon these three notes?

A. Yes, sir.

Q. Was there ever a full satisfaction on these three notes—
737 the three notes referred to in the original seizure and sale?

A. You mean under that proceeding?

Q. Under any proceeding.

A. No, sir; there was not. We obtained a judgement in favor of the holders of these three notes, and the bank seized the property and sold it, and the Louisiana State Bank bought it and sold it again, and they paid as the notes fell due the same percentage on all the notes. I don't know how much.

Q. Was the result of all this litigation in both suits such as to pay in full the principal and interest of the three notes?

A. No, sir; I think not.

Q. Do you remember to what extent they were paid?

A. I know there was not sufficient to pay the three notes. They were for $50,000, and the plantation sold for less than that.

Q. Do you know what percentage of the three notes described in the original seizure was paid as the result of all this litigation?

A. I cannot say. I do not think there was over thirty per cent.

Q. Do you know whether Mr. Urquhart or his counsel,
738 either here or at Rapides, ever instituted any proceedings to pursue any of the property that had been captured under the first seizure and not sold—cotton or mules?

A. No, sir; except those offered in evidence here to-day.

Q. In the record proceedings on the entire series of notes, I understand you, the whole series of notes under the mortgage were put in suit?

A. We obtained judgement in the separate suits for Mrs. De Boigne, Dr. Bush, and the Bank of Louisiana. Dr. Bush did not join. These others were then in suit.

Q. Do you know where the others were?

A. I don't know. They may have been withdrawn by the bank. They were all deposited with the clerk at the time the judgment was obtained.

Q. You spoke of some pledge of the Urquharts or one of them of the remainder of the series of notes, after deducting the three,
739 to the Louisiana State Bank?

A. I know that these three notes were pledged to the State Bank, from information by Mr. Urquhart and by the officers of the bank.

Q. Did you ever see the pledge?

A. I did not; Governor Hyams did; he always looked into these things very carefully.

Q. Have you any means of knowing what debt of the Urquharts or either of them these notes were pledged to secure?

A. No, sir.

Q. You do not know whether it was to secure their own notes?

A. I do not know; I think it likely it was, as I am informed that such business is done.

Q. I understand you to say that the Urquharts had a good commercial standing here up to the time of the war?

A. Yes, sir.

Q. What was the commercial standing of the firm after the war?

A. It was broken after the war—completely broken up and bankrupt.

Q. Did David Urquhart come back bankrupt?

740 A. Yes, sir; his firm was under protest. I considered them broke, and they eventually went into bankruptcy. All the merchants joined in a recommendation to their customers not to send any cotton here to meet notes, and then it was not considered a discredit.

Q. State, if possible, if you can recall how it was that you came to know — had had the property on the Linton plantation in his possession or custody under an appointment from the sheriff.

A. We knew it from seeing the appointment from the sheriff. I am almost positive it was affixed to the return made by the sheriff. I knew it as a fact. Urquhart and ourselves had a conversation with Wells on the subject of the institution of this suit. Governor Hyams had been Wells' lawyer for thirty years.

Q. Do you know exactly how and for what reason J. Madison Wells was interviewed in this matter of the motion for an *alias* proceeding?

A. As I told you, for the purpose of making the sequestration stronger, and claiming it necessary for the benefit of the mortgage creditor that this property was subject to his seizure, but also

741 that Wells was the keeper of the property and had a right to take it by judicial process wherever it was found.

Q. Do you know who got Wells to intervene here?

A. I think Urquhart, under our advice; the great object was to arrest the cotton.

Q. This jurat seems to have been sworn to before Dick, deputy clerk. It is probable, then, that Wells and Urquhart went with you down to court?

A. They did. We went in a cab. I suppose we were in a hurry.

Q. Do you know from whom Urquhart got the information that the cotton was here?

A. I don't know. He came with the information to us in great haste with it.

Q. State what you can remember as to when David Urquhart cast his lot with the Confederacy and joined the army.

A. Certainly. Before the battle of Shiloh, in 1862; it was before the capture of New Orleans.

Q. Was he at the battle of Shiloh?

A. I am not certain.

742 Q. When did you first see him?

A. I saw him in the army of Tennessee. I was not in that army until 1863. I was with Johnson's army and I heard of him being in that army long before.

Q. Do you know what time he left the service?

A. He did not leave the service until the war ended. I think he got home after I did. He was in North Carolina.

Q. When did you last see William Urquhart?

A. I saw him in the early days of the war. I had no particular

business with them at this time, but they were Governor Hyams' merchants.

Q. I want to get at what time you saw him last. Did you see him up to the time you went into the army?

A. I think I did occasionally.

Q. What time did you leave New Orleans?

A. Just before the capture of this city by the Federals.

Q. Some time early in 1862?

A. Yes, sir.

Q. When did you next see him?

A. I saw him after the war.

743 Q. In 1865 or 1866?

A. I think it was later.

Q. Do you know whether he was here in the city when these subsequent proceedings were instituted?

A. I cannot say. I am not positive. He was a cipher in the business and I did not give him a thought.

Q. Do you know this suit was instituted in the name of David Urquhart instead of the name of the firm?

A. I do not.

Q. I suppose the supplemental proceeding was instituted in his name because the original was?

A. Yes, sir.

By Mr. FARRAR:

Q. Why did you in October, 1865, dismiss this suit No. 14665, if the notes at that time had been unpaid?

A. We were instructed. We thought it the best mode to dismiss the seizure and sale and get a judgment for the whole debt.

744 The greater part of the property, had perished the negroes were gone, and only the plantation left, and we thought it better to have a personal judgment against them.

Q. You dismissed the suit on the 20th October, 1866?

A. Yes, sir; and brought the others in 1867.

Q. And you brought the suit for the State Bank on the 26th September, 1866?

A. Yes, sir; I brought the other suits on the same date on the other notes. We brought a suit for Mrs. De Boigne and another for the Bank of Louisiana.

Q. When was it you found out that these three notes, which were in suit No. 14665, did not belong to David Urquhart?

A. Before the institution of the direct actions.

Q. That is, in the interval between 1865 and September, 1866?

A. Yes, sir.

Q. From whom did you first obtain that information?

A. From the parties in interest—from Mr. Urquhart and

745 from the Bank of Louisiana, who put their claim in our hands and took a receipt for it.

Q. He told you that they were bought, these three, the one of Mrs. De Boigne, the one of Dr. Bush, and the one of the Bank of Louisiana?

A. Yes, sir.

Q. You dismissed this suit on the 20th October, 1866, and you brought this other suit on the 26th September, 1866?

A. Yes, sir.

Q. I find, upon this supplemental proceeding, dated October 31st, 1875, the receipt of Hyams & Jonas for the papers marked "A, B, and C," filed herewith?

A. Yes, sir.

Q. The papers marked A, B, and C, the return of the sheriff to the original writ in this case and the order appointing J. Madison Wells the keeper of the property?

A. Yes, sir.

Q. Have you these documents in your possession?

746 A. No, sir; I have not. I looked for them, but cannot imagine what became of them. I think they were sent to Rapides parish and were probably burned up in the court-house. Everything was burned.

Q. What necessity should there be for sending these papers to the parish of Rapides, it being the return of the sheriff?

A. I do not know.

Q. What imaginable necessity should there be to send up documents there, the very documents whose place is here?

A. There was a necessity for withdrawing these papers or they would not be withdrawn. What the necessity is I do not know. I had a dozen searches made by the clerks and they could not find them; neither of these records either. Two or three times I ordered searches to be made for them unsuccessfully. They could not find them.

Q. Particularly this record, No. 14665?

A. Yes, sir; and the others, but they could not be found.

747 It is mutually agreed between the solicitors present that requisite notices for oral examination have been given and accepted.

748 United States Circuit Court, Fifth Circuit, Eastern District of Louisiana.

Mrs. MARIE P. EVANS, etc.,
vs.
DAVID URQUHART *et als.* } 7672.

Testimony taken on behalf of The State National Bank, defendant, under the 67th rule, as amended, of the courts of equity of the United States, before F. A. Woolfley, special examiner, duly appointed and qualified to take the depositions of witnesses in the above-entitled cause, all legal objection as to the admissability of evidence being specially reserved.

NEW ORLEANS, *March* 31*st*, 1884.

Present: James McConnell, Esq., solicitor for defendant, State National Bank; Albert H. Leonard and W. R. Mills, Esq., as solicitors for complainants.

DAVID URQUHART, a witness produced, sworn, and examined on behalf of State National Bank, defendant, deposes ond says:

749 By Mr. MCCONNELL:

Q. Were you a member of the firm of W. & D. Urquhart, which existed in the city of New Orleans in 1860 and 1861?
A. I was a member of that firm.
Q. Who composed that firm?
A. William Urquhart and David Urquhart.
Q. You are the David Urquhart of that firm?
A. I am.
Q. Who was the business man of the firm, particularly?
A. I was.
Q. In 1860 and 1861 what was the financial condition of that firm—was it a wealthy firm or not?
A. They were well off then.
Q. What do you mean by well off?
A. I suppose they had about $300,000.
Q. Above all liabilities?
A. Yes, sir.
Q. You could have liquidated the firm then?
A. Yes, sir; could have liquitated.

750 Q. On the 27 December, 1859, was there a mortgage given by Stephen Duncan Linton to W. & D. Urquhart, of New Orleans, before Theodore Guyol, notary public?

A. Yes, sir; there was.

Witness being shown the act of mortgage already offered in evidence by the complainant-, "U. No. 1."

WITNESS: Yes, sir; this is the identical one.
Q. I see by this act of mortgage that there were twelve mortgage notes executed by Stephen Duncan Linton for $10,833.33⅓ each?
A. Yes, sir.
Q. Aggregating the sum of $130,000?
A. Yes, sir.
Q. Borrowed money which he borrowed from you?
A. Yes, sir; borrowed money.
Q. For which he gave these twelve notes?
A. Yes, sir.
Q. I see by this act of mortgage that four of these notes matured in the year 1861; four of them matured in the year 1862; four of them matured in 1863. Now, will you tell me whether or not a

751 suit was brought against Stephen Duncan Linton under which the mortgaged property in this act was seized or not; and, if so, who brought that suit?

A. I brought the suit against Mr. Linton on three promissory notes, each for $10,833 and some cents, in the year 1861.
Q. Was it before you went out in the Confederacy or not?
A. Before I went to the war.
Q. Whom did you employ to bring that suit?
A. John K. Elgee was the attorney for part of the business.

Q. That suit was brought by you on three of these notes?
A. Yes, sir.
Q. Was the plantation seized under them?
A. The plantation was seized under these three notes.
Q. The property described in the act of mortgage was seized under these three notes?
A. Yes, sir.
Q. Did the Louisiana State Bank have anything to do with that seizure?
A. No, sir.
Q. At any time?
752 A. Never had anything to do with it.
Q. Do you know of any suit brought about the same time on the same mortgage notes of that series?
A. Yes, sir; there was another suit brought by Aaron Cohen on one note due of that series.
Q. That was one of the twelve notes and one of those that fell due in 1861?
A. Yes, sir.
Q. Did the Louisiana State Bank have anything to do with that suit of Cohen?
A. No, sir.
Q. Then the plantation was seized on these four notes?
A. Yes, sir.
Q. Who was the attorney in the suit of Aaron Cohen?
A. John K. Elgee.
Q. And the property described in this act of mortgage was seized on that note of Cohen?
A. Yes, sir; the same property. I can explain to you how it happened.
Q. How what happened?
A. Why we seized the place and why Cohen seized also.
Q. Explain it.
753 A. The firm of W. & D. Urquhart seized first in my name, as I think my name was used as the member of the firm—the seizing creditor. I seized on three notes.
Q. You were going to explain why Cohen brought the suit.
A. Then Mr. Linton enjoined us.
Q. Who did Mr. Linton enjoin?
A. He enjoined me.
Q. Did he enjoin*ed* Cohen?
A. He enjoined me by stating that we had promised him an extension, which was not the fact. We never promised him an extension, but Judge Spofford put that in to stay the proceedings as a subterfuge.
Q. In what suit?
A. In the suit that W. & D. Urquhart brought.
Q. What had Cohen's suit to do with that?
A. Then Cohen seized the property also.
Q. Was Cohen's suit enjoined?
A. He could not enjoin his, because he was an outsider. They

could not say that he was a member of the firm of W. & D.
754 Urquhart. That was the reason why the injunction was taken out against me.

Q. But not against Cohen?

A. But not against Cohen, and they paid the Cohen suit. The Confederate Government passed a stay law, and our seizure remained so during the balance of the war on that property. That is the plain state of the case.

Q. Your seizure of W. & D. Urquhart against Stephen Duncan Linton on the three notes remained on the property during the war?

A. Yes, sir.

Q. Did the Louisiana State Bank have anything to do with that seizure?

A. No, sir; never.

Q. Or with keeping that seizure on the property during the war?

A. No, sir; nothing whatever.

Q. Are you positive of that?

A. Yes, sir; I know it.

Q. Did the Louisiana State Bank induce you to bring the suit of Urquhart against Linton or did you do it of your own accord?

755 A. No, sir; the Louisiana State Bank had never any interest in these notes. They were the property of the house of W. & D. Urquhart, of which I was a member. The Louisiana State Bank had no more interest in these notes than the first passer-by on the street. That bank did not hold any of the first series that fell due in 1861.

Q. Will you please look at this record, No. 14665, fourth district court, and state if that is the record of the seizure to which you refer-ed?

A. Yes, sir; I have seen these papers in the court-house down there, and I recognize the documents.

Witness being shown the original record of the suit No. 14665 of the fourth district court of New Orleans, entitled David Urquhart against Stephen Duncan Linton, petition for executory process, states that that is the petition of the suit refer-ed to by him, upon which he prayed for executory process on the three notes.

Q. Please examine the petition and state in whose hand-
756 writing it is.

A. Judge Elgee—John K. Elgee.

Q. Look at the signature to the petition.

A. I know the writing. It is not necessary to look at his signature.

Q. Are you familiar with his handwriting?

A. Yes, sir; I am.

Q. I will read a few extracts from this petition which you have identified as the handwriting of Mr. Elgee.

"To the honorable the judge of the fourth district court in and for the city of New Orleans:

"The petition of David Urquhart, a citizen of the city of New

Orleans, respectfully showeth that Stephen Duncan Linton, formerly a resident of the parish of East Baton Rouge, but domiciled now in the city of New Orleans, justly owes him $32,500, with eight per cent. per annum interest on one-third of said sum from the 13th January, 1861, until paid; a like interest on one other third
757 from the 13th February, A. D. 1861, until paid; a like interest on the remainder third of said sum from the 13th March, 1861, until paid, besides ten dollars and a half, cost of protests, and the costs of these proceedings, in which are to be included five per cent. on the amount herein sued for, being attorneys' fees or commissions for instituting these proceedings.

"Petitioner represents that the said indebtedness is evidenced by three promissory notes, each one for $10,833.33⅓, drawn by the said Stephen Duncan Linton to his own order, and indorced in blank by himself, which, with the protests, are herewith filed for reference, the same being a portion of twelve promissory notes executed on the 27th day of December, in the year 1859, by the said Stephen Duncan Linton to and in favor of W. & D. Urquhart, each one being for a like sum, forming an aggregate of $130,000.

"And petitioner represents that when said Linton executed
758 the said notes he at the same time, to wit, on the day of the date thereof, by public act passed before Theodore Guyol, a notary public, executed also a special mortgage to secure the payment of the same—principal, interests, and costs—upon a certain cotton plantation known by the name of the Quantico plantation, situated in the parish of Rapides and State of Louisiana, and also upon one hundred and ninety-five slaves attached to said plantation, with their increase, and also upon all the personal property attached to said plantation.

"And petitioner represents that the said Linton did therein bind and obligate himself, in case it should become necessary to institute legal proceedings for the recovery of the amount of the said notes or any part thereof, to pay the fees of the attorney-at-law who should be employed for that purpose, and which fees were therein fixed at five per cent. upon the amount sued for; and he further
759 represents that the payment of the said fees are secured by the mortgage aforesaid; and the petitioner further represents that the said mortgage was executed not alone in favor of the commercial firm of W. & D. Urquhart, the original mortgagees, but the said Linton did in said instrument expressly agree that the benefits of the said mortgage should inure to the use and benefit of any and all future holders of the said promissory notes.

"Petitioner further represents that the said Linton did therein also agree and stipulate that all proceedings upon the said mortgage for the recovery of the amount of said notes or any of them might be instituted and had before any of the district courts of New Orleans; all of which can be more fully seen by reference to said act of mortgage, a copy of which is herewith filed for reference and annexed hereto.

"The premises considered, petitioner prays your honor to
760 grant him an order of seizure and sale, to be addressed to the

sheriff of the parish of Rapides, directing him to sell according to law the property set forth in the act of mortgage aforesaid upon the terms following: For so much cash as will pay and satisfy the three notes held by petitioner and filed herewith, amounting to $32,500, besides interest, costs of protests, costs of suit, and five per cent. commissions as attorneys' fees, and upon such terms of credit as will correspond with the maturities of the remaining notes set forth in the act of mortgages aforesaid; and petitioner prays for general relief in the premises.

"JOHN K. ELGEE,
"*Attorney-at-Law, for Petitioner.*"

Q. That was the petition addressed to the court?

A. Yes, sir.

Q. Look at the order under that written and state in whose handwriting it is. (*It is*) not the same?

A. It is the same—Judge Elgee's handwriting.

761 Q. The order is as follows:

"Let an order of seizure and sale issue as prayed for and let the mortgaged property set forth in the act of mortgage on file in this cause, to wit, the act executed the 27th December, 1859, by Stephen Duncan Linton to and in favor of W. & D. Urquhart, be sold according to law for so much cash as will pay and satisfy the seizing creditors' demand, principal, interest, and all costs, including five per cent. commissions on the amount sued for as attorneys' fees, and upon such terms of credit as will correspond with the falling due of the remaining nine notes set forth and described in the act of mortgage aforesaid, and let the defendant have due notice thereof.

"Done and signed at chambers on this 15th March, A. D. 1861.

"JOHN W. PRICE, *Judge.*"

762 Q. The signature of John W. Price is different from the handwriting itself?

A. I don't know the Judge's handwriting.

Q. Now, at the time that this suit was brought, which was filed the 15th March, 1861, you say that only four of these notes were due?

A. Only four.

Q. The suit, therefore, could not have been brought on any others of the series?

A. No, sir.

Q. Four were due in 1862, according to the act of mortgage, and four were due in 1863?

A. Yes, sir.

Q. When this suit was brought by Mr. Cohen that you have spoken of—I would ask you to look at the record No. 14708 of the fourth district court, entitled Aaron Cohen *versus* S. D. Linton, petition and order of seizure and sale, and state in whose handwriting that petition is.

A. That is in Judge Elgee's handwriting also.

Q. What is indorsed on the back of that petition?

763 A. "We are responsible for costs."

Q. Who is it?

A. W. & D. Urquhart, my firm.

Q. You were security for costs?

A. Yes, sir.

Q. Did Cohen bring this suit of his own accord or did you urge him to bring it?

A. I urged him to bring it.

Q. I see by the act of mortgage itself that Mr. Linton bound himself to ship the crops of the plantation to the house of W. & D. Urquhart for the security of the payment of these mortgage notes. Did he keep that obligation or not?

A. He did not.

Q. Had the failure of his during so and keeping that obligation anything to do with the house of W. & D. Urquhart making the seizure of this plantation? If so, explain that.

A. That was the reason I made the seizure. I would not have made it under ordinary circumstances, but I found Mr. Linton, who was in business here, then under the name of Mandeville & Linton, and they were receiving his crop.

763½ Q. You were to receive it under this act of mortgage?

A. Yes, sir. I found that he had diverted some of his cotton from our house. We had people on board the boats when they arrived. Every boat that arrived here we had a clerk on board, showing when the cotton that was received was ours. It was reported to us that a lot of fifty bales of the Quantico cotton had come down to Mr. Linton's own house.

Q. When the act of mortgage required — to be sent to you?

A. When the act of mortgage required that every bale should come to my house to liquidate this large indebtedness. Then immediately we made up our minds the first note that was due that we would put the screws on, get out of that business, and sell out his.

Q. That was, then, the real cause of your bringing the suit on that executory process?

A. Yes, sir.

Q. Instructing Mr. Cohen to do the same thing?

A. The same thing with Cohen. He bought one of the
764 notes, and we were indorsers on the note that Cohen held. We urged him to bring the suit and he did bring the suit and got his money in gold.

Q. Now, were you not indorser also upon the other three notes upon which the executory process was brought?

A. We were.

Q. Was the house of Urquhart the actual owners of these three notes described in this suit No. 14665?

A. Yes, sir; we were the actual owners.

Q. Were there not three parties that were interested in these three notes, each one seperately, Mrs. De Boyne?

A. Well, we paid them all up. They held the notes originally, and we took them up as they fell due.

Q. Mrs. De Boyne was one?

A. Yes, sir; she was my sister. I took it up.

Q. Who was the other holder of the notes on which your name stood?

A. It was A. & M. Heine, of Paris.

765 Q. Was there not one of them in which the Bank of Louisiana was interested?

A. One of them, A. & M. Heine; the other one, the Bank of Louisiana.

Q. You stated that A. & M. Heine were interested in the one, the Bank of Louisiana in one, and Mrs. De Boyne in one.

A. Yes, sir.

Q. Who was Mrs. De Boyne?

A. She was my sister that lives in Paris.

Q. Do you know who was appointed keeper of this plantation under this seizure that was made in this suit No. 14665?

A. No, sir; I forgot the name. I did not take much interest in who the keeper was then.

Q. You do not remember?

A. No, sir; it is so long since.

Q. Please look at this paper which I found in this record and state in whose handwriting it is.

A. That is Judge Elgee's handwriting.

Q. It reads as follows: "Mr. De Choisent will please obtain the necessary order from the judge and then file with the clerk the papers. He will be so good as to direct two copies of the

766 petition and order thereon to be made out, after which the sheriff will serve one upon Mr. Linton and make his return upon the other; but the one having the return upon it is to be given to me so that I can exhibit it to the sheriff of Rapides as evidence that due and legal notice has been given prior to the issuance of the writ. Ask the sheriff to make the service as soon as possible. Elgee. New Orleans, 15 March, 1861."

Q. In this same suit, No. 14665, in which this order of seizure and sale issued I find an order of seizure marked "filed October 31, 1865," which is marked as sworn to and subscribed 31st October, 1865, by David Urquhart and J. Madison Wells, before J. F. Dick, deputy clerk." Look at that and state whether that is your signature to that affidavit or not.

A. Yes, sir; that is my signature.

Q. Is that the signature of J. Madison Wells?

A. Yes, sir; that is his signature.

Q. Did you make that affidavit at the date stated there?

A. I did.

767 Q. Did you make that on that date?

A. Yes, sir; that was made before Judge Theard.

Q. The paper which you have just stated that you made oath to reads as follows. I ask you to listen to it now and say whether you reiterate now the facts stated therein as true:

"DAVID URQUHART
versus
STEPHEN D. LINTON. } No. 14665.

"The plaintiff in this case moves the court to issue an order of seizure, directed to the sheriff of Orleans, in this case, to seize 65 bales of cotton now within the jurisdiction of this court, having been furtively and forcibly, fraudulently and illegally, taken from the custody of the sheriff of the parish of Rapides by the advice, procurement, and at the instance of Henry Perkins, who now, by himself or his agents, has wrongful and illegal possession thereof, and, unless immediately taken possession of by the sheriff of the parish of Orleans, will be carried out of the parish or disposed of contrary to the rights of the plaintiff and in contempt of the authority of this court.

768 Plaintiff avers that said cotton was grown and gathered after the writ of seizure was duly executed and the property advertised for sale and inured to the benefit of the seizing creditor, and that while so in the sheriff's custody and keeping to await the sale of the other property and the cotton, which *it* was, as above asserted, taken from the custody of the sheriff and brought here into the parish of Orleans by the cotton bureau through the agency of said Perkins, and now has been delivered over to said Perkins as not being property either captured or abandoned; that said cotton was brought down in seed in 316 bags, and which produced, after ginning, sixty-five bales, & which, until the said order of the cotton bureau, was in their custody and in the hands of their agent, J. W. Burbridge, of New Orleans. The plaintiff reserves herein the right to pursue the said H. Perkins and all others for this unjust invasion of his rights. He appends hereto

769 the return of the sheriff of Rapides to the original writ of seizure, issued by your honorable court on the 18th March, 1861, showing seizure, advertisement, etc., and also the order of the sheriff of Rapides, putting the cotton in the custody of J. M. Wells, as his special agent, to guard and protect the same and all the other property till the sale thereof and further legal proceedings in the premises. The plaintiff reserves the right to ask for other and additional proceedings and remedies in this case.

"HYAMS AND JONAS,
"*Att'ys for Petitioners.*

"Before me, the undersigned authority, personally appeared David Urquhart and James M. Wells, who, after being duly sworn, made oath that all the allegations above set forth are true.

"DAVID URQUHART.
"J. MADISON WELLS.

"Sworn to and subscribed before me the 31st October, 1865.

"J. F. DICK,
"*Deputy Clerk.*

770 "*Order.*

"Let an order of seizure issue in this case, as herein prayed here, and let the property herein described be seized in whatever it may be found.

"New Orleans, October 31, 1865.

"PAUL E. THEARD, *Judge.*"

Q. Did you make that affidavit?

A. Yes, sir.

Q. Were the facts that you then stated in that affidavit true and correct?

A. Yes, sir.

Q. I ask you now whether you reiterate them.

A. Yes, sir; I reiterate them now.

Q. Tell us about the history of that seizure that you made, then, in 1865, and what became of the cotton that you seized in that case. Tell us the whole history of it.

A. I received an anonymous communication, but which I recognized as coming from Governor Wells, that a lot of cotton had been taken off the Quantico by the United States bureau and brought down to this city; that Mr. Perkins had instigated the seizure
771 of this cotton by the bureau; that he was very anxious to see me recover something of this mortgage debt, and would do all he could to help me recover that cotton—this sixty-five bales. We went before J. W. Burbridge, the cotton agent who held the cotton for the United States. We made our claim through Judge Manning, who was my attorney, one of the present justices of the supreme court. He was my spokesman, and Mr. Burbridge decided that he would take the case under advisement, and, as soon as it was released one way or the other, that the order of release should be notified to us as soon as to any other party. I was notified, and found that the cotton had been restored to Mr. Henry Perkins. Then I seized the cotton in the press.

Q. You got this order from the court that I have just read?

A. Yes, sir. I went with the sheriff to J. W. Burbridge's house, on Lafayette square, and I served with the sheriff that notice on J. W. Burbridge myself. Then we went to the press and we got the cotton. We stopped it. A portion of it was going on board
772 of a ship there. Then we had a mixed-up affair, and we agreed to pay the charges, allow J. W. Burbridge to sell the cotton, and distribute the proceeds.

Q. Who got the proceeds?

A. Then I and Mrs. Linton, who was here at the time, or Mr. Perkins, who was acting as her agent—there was only a small amount left. The costs of this bureau eat nearly the whole sum up, and what was left was divided. Mr. Perkins, as Mrs. Linton's agent, took one-half and I took the other half.

Q. Do you refer to Henry Perkins?

A. I don't remember. I think it was Mr. Perkins.

Q. He took one-half?

A. He got Mrs. Linton's half as the agent of Mrs. Linton.

Q. The man that you paid it to as her agent was Mr. Perkins?
A. Yes, sir.
Q. You got the other half?
A. Yes, sir; I got the other half.
Q. That was the property that was seized on this order of seizure that has just been read to you in your hearing?
773 A. Yes, sir; that is the property that was seized.
Q. When that suit was pending in court, before that compromise was made, do you remember whether or not this paper was filed? State if that is your signature and the signature of Governor Wells to that paper.
A. That is my signature and Governor Wells' signature.
Q. Is that your affidavit made to that paper?
A. Yes, sir; that is my affidavit.
Q. You and J. Madison Wells both made the affidavit to this paper?
A. Yes, sir.
Q. I desire to read this to you. I see it is both signed by you. Look at it. Is that your signature?
A. Yes, sir.
Q. This appears to be a brief in the case, but the signatures to it—I want you to examine that particularly and state if that is the signature of J. Madison Wells, and is it your signature?
A. Yes, sir; that is our signature.
Q. So far as the facts in this brief are concerned, I desire you to listen to the facts stated in it and tell me whether or not
774 these facts are true and correct and whether you reiterate them:

Fourth District Court of New Orleans.

DAVID URQUHART } *versus* S. D. LINTON. } No. 14665.

"In this *court* the order of seizure and sale issued from this court on the 16 March, 1861."

Mr. Leonard, for complainants, objects to this mode of examining the witness. The witness must state what he knows without hearing facts read from a paper to him and then asked if they are correct.

Q. State what you know of your own knowledge with regard to the contents of this paper.

Witness, being shown the brief refer-ed to, states that the signatures to it are his own and J. M. Wells' signatures.

Q. I will read the facts therein stated over to you, so that you may state whether they are true and correct or not and whether you now reiterate them:

"Fourth District Court of New Orleans.

"DAVID URQUHART
ve-sus
"STEPHEN DUNCAN LINTON. } No. 14665.

775 "In this case an order of seizure and sale issued from this court on the 15th March, 1861, addressed to the sheriff of the parish of Rapides, and which was duly executed by seizure of the property therein described, all of which will appear by the writ of seizure and return therein made by the sheriff of Rapides on the 21st March, 1861, and after due notices was advertised on the 3d April, 1861, to be sold on the 4th of May, 1861. After the seizure and before the date of sale all further proceedings were stayed, but the sheriff *as* in duty bound to keep and did keep possession of the property up to the present day, and it is now advertised for sale. The cotton was gathered during the possession of the sheriff, and as such, under the law of Louisiana, formed a part of the effects seized, and *are* held under the seizure and formes as much a part of the security of the seizing creditor as the land itself. These facts and the actual possession of the cotton are patent by the writ of seizure itself,
776 now submitted, and the authorization of the sheriff, Wm. J. Neal, to Major (now Governor) J. M. Wells, to take charge for him of all the cotton, corn, and personal effects upon the Linton plantation, and he has authority further to keep all intruders from off the land.

"August 21, 1863.

"(Signed) W. J. NEAL, *Sheriff.*"

Then follows in this document the quotation, art. 457, Civil Code: "The fruits of an immoveable, gathered or produced, since it was under seizure are considered as making a part thereof and inure to the benefit of the person making the seizure." See also 9th Robinson, 256, and 1st Hennens' Digest, page 647, or many decissions in point. This cotton was grown and produced while the plantation was under seizure by the sheriff of Rapides, at the suit of David Urquhart, and Governor Wells was the custodian of the property which is now and has been since March, 1861, under seizure, the sale having been stayed by the general stay law, passed
777 in 1861. The seizing creditor held this cotton legally against the world, and neither debtor or any assignee or person claiming through him can set up any legal claim to the cotton.

"Governor Wells has an interest in the debt, although not a seizing creditor by name, as well as being the custodian for the sheriff for the benefit of Mr. Urquhart, the seizing creditor.

"J. MADISON WELLS.
"DAVID URQUHART."

Then follows this expression on the same paper.

"The writ of seizure and *seizure and* return of sheriff of Rapides, marked 'A;' the sheriff's order to Governor Wells to take charge of and keep the cotton, marked 'B.' When the authorities

cho-se to name a day full testimony, if considered necessary, beyond the sheriff'- return can be submitted.

"J. M. W.
"D. U."

Q. After hearing this paper read is there any fact, leaving
778 out the law—is there any fact that is stated in this paper to which you then put your signature as correct that you are now able to say is not correct, or are the facts stated in the paper correct?

A. My signature to that paper when I put it there—I put it over the facts that I stated as being correct.

Q. I would like to ask you with regard to one or two of these facts I see at the close of this paper, which I would call a brief, a statement that Wells has an interest in the debt, although not a seizing creditor by name, but the custodian of the sheriff. Explain that fact. How was it he had an interest in the debt, although not a seizing creditor?

A. During the war Governor Wells went to a Mr. Bush, who had one of these Linton notes; I think it was.

Q. You mean one of the four that was in suit?

A. Yes, sir; one of the notes. I would have to look at my books or papers to see which.

Q. I want to know whether it was one of the four notes upon which the suit was brought.

A. I really don't know. Yes, sir; Bush was one. He held
779 one of these seizing notes, which belonged to one of the first series.

Q. It was one of the first of the seizing notes?

A. Yes, sir.

Q. These notes upon which the seizure was made?

A. Yes, sir.

Q. Now go on and tell the story.

A. Governor Wells went to him and said, "I will pay you this note;" and Bush said, "I am ready;" and Wells said, "I will give you $10,000 in greenbacks for it;" and when they went to complete the bargain Bush could not produce his note. Then he said, I forgot to tell you that that note was in the hands of Urquhart, in New Orleans; and Wells then said, "Just give me an order on him; I cannot give you the full amount of the note, but here are $3,000;" and Wells gave Bush the $3,000 for Bush to assign that note over to him.

Q. Is that the matter that is refer-ed to in this statement of facts in this paper?

A. Yes, sir.

Q. Then that is what you have reference to when you and
780 Wells say he had an interest as a creditor?

A. Yes, sir.

Q. How did you learn these facts that you have just now stated?

A. From Dr. Bush himself; he was one of my correspondents. I attended to his business and kept his notes, etc.

Q. How did you come to have this note in your pos-session, this $10,833 note?

A. As I said, I was Dr. Bush's agent and done just whatever I chose with his notes. I invested his money and reinvested it; sold his cotton, and transacted his business generally.

Q. The note, then, was in your possession?

A. The note was in my possession.

Q. Let me call your attention to what appears to be a discrepancy here. You said that that note belonged to Mr. Bush, and Governor Wells bought it and paid him $3,000 for it, and it was one of the notes upon which executory process issued in this suit, No. 14665?

A. Yes, sir.

Q. That makes one note?

A. Yes, sir.

781 Q. Another one, you said, was held by the Bank of Louisiana?

A. Yes, sir.

Q. And another one by Mrs. De Boyne?

A. Yes, sir.

Q. One to Mrs. De Boyne, one to the Bank of Louisiana, and one to Dr. Bush?

A. Yes, sir.

Q. Now, what about A. & M. Heine's notes?

A. Well, they were in either the first or second; maybe it was Bush's that was in the second series or A. & M. Heine's was in the second. It is so long ago that I cannot tell you.

Q. But you said just now that there were only four notes that fell due in 1861.

A. Yes, sir.

Q. Consequently there were only four under which the seizure was made?

A. Well, Bush's, perhaps, was the next series.

Q. There were only four due in 1861?

A. Yes, sir; only four due in 1861. The four due in 1861 were the four notes sued upon.

782 Q. Were any suits ever brought upon the other eight notes?

A. No, sir; never, to my knowledge.

Q. Would there have been one brought without your knowing it? Were you not so familiar with the facts?

A. Well, I don't think it could have been brought.

Q. Was not your name as endorser upon all the other eight notes?

A. Yes, sir.

Q. The remaining eight of the twelve?

A. Yes, sir.

Q. You stated that in the interview that you had with the officer of the United States Government that had those sixty-five bales of cotton Judge Manning was your counsel?

A. Yes, sir.

Q. Who were the lawyers that conducted that suit for you in the seizure?

A. Hyams & Jonas.

Q. Now, I want to ask you if, in any of the transactions connected with the seizure of this plantation on these mortgage notes, the Louisiana State Bank had any connection, directly or indirectly.

A. Never, to my knowledge.

783 Q. Did the Louisiana State Bank ever receive any money realized from the seizure of that plantation, directly or indirectly?

A. Never under that seizure.

Q. Do you know of any way or time in which the Louisiana State Bank ever received any money from the Quantico plantation unless it was subsequent to the year 1866?

A. Subsequently I know of her receiving.

Q. Subsequent to what period?

A. 1866.

Q. When she seized the plantation?

A. Yes, sir; when she seized the plantation.

Q. That seizure was made, however, on what notes?

A. That was made on the notes which she owned herself.

Q. When did she become the owner of these notes which she owned herself?

A. She became the owner after the war, in 1864, or later on. We went into bankruptcy.

Q. The house of W. & D. Urquhart?

784 A. Yes, sir; went into bankruptcy, and the assets were sold, and the bank bought in their notes.

Q. These notes? What notes do you refer to? There were twelve notes, and you have accounted for the four that fell due in 1861. There were four that fell due in 1862 and four in 1863. What notes did the bank purchase at the insolvency sale of W. & D. Urquhart after the war?

A. As far as my recollection goes they were six or seven notes. I cannot state pos-tively how many.

Q. Did you surrender these notes in your insolvency proceedings?

A. Yes, sir.

Q. Your proceedings will show that?

A. Yes, sir; our tableau will show that.

Q. There is a paper offered—offered in evidence—purporting to be from your tableau of your insolvency. These notes, as I understand you, formed a part of your assets.

—. ——.

Q. All of them were sold?

785 A. Well, not all of them, because the bank had discounted some out of the four—that is to say, I think she had three of the notes that fell due in 1862.

Q. But these three did not fall due until 1862?

A. No, sir; these belonged to her and did not form any part of our assets in bankruptcy.

Q. These three notes?

A. Yes, sir; these three notes.

Q. And the remaining five?

A. The remaining five notes were put up as collateral security for

borrowed money by the house of W. & D. Urquhart from the State Bank.

Q. Did the Louisiana State Bank, as the holder of these notes, either by discount or by being pledged to them in any way, shape, manner, or form, have anything to do with the seizure of the Quantico plantation except in 1866?

A. The bank had never anything to do with the seizure until she seized the property in 1866.

Q. But prior to the seizure of the plantation by the bank in 1866 on her eight mortgage notes, I ask you now whether the bank
786 had anything to do with the Quantico plantation?

A. No, sir; never. They never had anything to do with the Quantico place.

Q. Would it not have been impossible for the bank to do so without you knowing it?

A. Well, I cannot say that.

Q. Were not your relations such that you would have known it?

A. I was away during the war.

Q. You were the seizing creditor?

A. Yes, sir.

Q. During what time were you out in the Confederate service? What time did you leave here and what time did you return?

A. I think it was in 1861 when I first went out; between 1861 and 1862. I think in 1861.

Q. Were you in the city at the time?

A. I was here at the time that the seizure was made; that was in March.

Q. You must have been here then because you indorsed the paper as responsible for costs, as you have stated.

A. Yes, sir.

Q. You were here in the month of March, 1861?

A. Yes, sir.

787 Q. You did not go out until after that?

A. No, sir.

Q. What time did you return here?

A. After the surrender of General Lee.

Q. Have you any knowledge that any cotton ever having come to New Orleans from the Quantico plantation, the proceeds of which or any part of them were received by the Louisiana State Bank?

A. No, sir; no knowledge of any such receipt, but I have heard.

Q. Do you remember at what date the firm of W. & D. Urquhart pledged these notes that fell due in 1862 and 1863 to the Louisiana State Bank?

A. I cannot tell you the exact date, but the act of pledge will show that.

Q. Do you remember whether or not that pledge was renewed from time to time when it fell due by W. & D. Urquhart?

A. You would have to get the records of the bank to show that.

788 Q. You have not looked it over?

A. No, sir.

Q. How did the bank hold these mortgaged notes that fell due in 1862 or 1863; did they or not hold them as collateral for your paper?

A. I have just stated that they loaned us money and we pledged as collateral, and they discounted three of them out and out.

Q. Do you remember what time that was?

A. I cannot give you the exact dates.

Q. With reference to these three notes that they discounted or the notes that they held under pledge, did any officer of the Louisiana State Bank at any time make any arrangements or have any understanding with you that the bank was to be benefitted in any way, shape, or form by the seizures that you were about to make in the suit No. 14665?

A. I never exchanged a word in my life about the Linton notes with any officers of the bank about that seizure.

789 Q. That was your affair?

A. Yes, sir; I never exchanged a word with any officer or person belonging to the bank about it.

Q. At the time that the bank held these notes in pledge that you have spoken of, in 1862, your name was on the back of the paper that was discounted by the bank, as well as on the notes that were held in pledge?

A. Yes, sir.

Q. I understand you to say that the house of W. & D. Urquhart, if it liquidated at that time, would have realized $300,000?

A. Yes, sir.

Q. The bank at that time held your name for their protection on that paper?

A. Yes, sir.

Q. What I want to get at is, did the bank have any motive in seizing that plantation to secure themselves while they had your name on the back of their paper in 1862?

A. There was no object, because they were certain of their money.

Q. Had you any conversation with the officers of the bank
790 of this suit with the view of securing them on the paper that they had discounted or the five notes that they held in pledge from you?

A. No, sir; never did.

Q. You have stated in your testimony, when your examination commenced as a witness, who was appointed custodian of the Quantico plantation under suit No. 14665, you stated you did not recollect. Have the papers I read to you since refreshed your memory with regard to who was appointed custodian?

A. Well, no, sir, my memory is not good.

Q. But you have stated it in the papers?

A. Yes, sir.

Q. But, having referred to the papers, you now state they are correct?

A. I said if I signed these papers I know what is in them is correct. What I signed is correct.

Q. The papers say that Wells was custodian?

A. Yes, sir. Then I say that he was custodian.

Q. Have you any knowledge of Wells being instituted keeper of the Quantico plantation other than in your suit and the Co-

791 hen suit—your suit No. 14665 and Cohen's suit No. 14708?

A. No, sir; never. These were the only two suits that ever existed on the property until after the war.

Q. I wish to show you here the record of suit No. 14669 of the fourth district court of New Orleans, entitled W. & D. Urquhart against Stephen Duncan Linton, filed March 15, 1861, on an account.

A. It is an open account.

Q. On an open account aggregating $31,08.01. Will you look at that record and say whether that is the original record of the suit brought at that time.

A. It is the original suit in the handwriting of Mr. De Choisent brought for our account.

Q. You seemed to be getting after Mr. Linton, according to this suit?

A. Closing all round on him.

Q. Why were you so eager to close all around on him at that time?

A. Because, as I stated, he violated his contract with us.

Q. The contract stated in the act of mortgage which I showed you is correct?

A. Yes, sir; we were looking out for ourselves then.

792 The Louisiana State Bank, now the State National Bank, offers in evidence the records referred to hereinbefore by the witness:

1st. No. 14665, David Urquhart *vs.* Stephen Duncan Linton, fourth district court of New Orleans. brought March 15, 1861.

2nd. Aaron Cohen *vs.* S. D. Linton, No. 14708 of same court.

3d. No. 14669, W. & D. Urquhart against S. D. Linton, of the same court.

Also records No. 14846, Stephen Duncan Linton *vs.* David Urquhart, an injunction suit, in the same court.

4th. Also record 17703 of the Louisiana State Bank *versus* Stephen Duncan Linton, fourth district court of New Orleans, filed September 26th, 1866, to foreclose the mortgage on eight of the mortgage notes described in the act of mortgage and referred to by the witness.

After which the examination of the witness was defer-ed until tomorrow, Tuesday, April 1, 1884, at 3 o'clock p. m.

793 Mrs. MARIE P. EVANS *et.* *vs.* D. URQUHART *et als.* } 7672.

NEW ORLEANS, *April* 1, 1884.

Testimony of the witness David Urquhart resumed this day at 3 o'clock p. m., as per adjournment.

Present: James McConnell Esq., — Louisiana State Bank, defendant; Albert H. Leonard and Wm. R. Mills, Esqrs., solicitors for the complainant-.

DAVID URQUHART recalled.

Cross-examined by Mr. LEONARD:

Q. You were in New Orleans, I see, on the 15th March, 1861?

A. Yes, sir.

Q. Is it not a fact that the general condition of the people of Louisiana at that time, including the city of New Orleans, was one of intense excitement?

A. Yes, sir; it was; it was in a very excited state.

Q. It had been so, I presume, ever since November of 1860?

A. About.

794 Q. What time was the secession convention held?

A. Well, I forget that now.

Q. Do you know where it was held?

A. I am aware that it was held here, but the date I don't know, at the Lyceum Hall, in this city.

Q. Were these proceedings instituted before or after the secession convention?

A. After it.

Q. Prior to the 15th March, 1861, had the State of Louisiana called out any troops?

A. I think she did.

Q. Were you in the service of the State?

A. I was.

Q. In what capacity?

A. My first service was as aid-de-camp to Governor Moore.

Q. Were you assigned to any duties in the field or in the organizing of troops?

A. Yes, sir; I was.

Q. I presume your duties were extensive and onerous?

A. Yes, sir.

Q. You were one of the aides-de-camp of Governor Moore?

A. Yes, sir.

Q. And your duties were extensive?

795 A. Yes, sir.

Q. It occupied the greater portion of the time?

A. No, sir; I divided my time. It did not take up all my time.

Q. It was the most important business you had then?

A. Yes, sir; it was that I thought more of, unfortunately, than anything else.

Q. The petition in this case you have read—No. 14665, David Urquhart against Stephen Duncan Linton; it has been read to you. I understood you to state that the allegations of that petition were true to the best of your knowledge and belief at that time."

A. Yes, sir; they were true.

Q. Did you have any connection with the military forces of the Confederate States?

A. Yes, sir; I was lieutenant colonel and adjutant general on General Bragg's staff.

796 Q. Was that your first connection with the services of the Confederacy?

A. It was.

Q. You passed from the State service to the Confederate service?

A. Yes, sir.

Q. About what time?

A. About April or May, 1862.

Q. Do you remember at what time the Confederate governm-t was established at Montgomery?

797 A. It was in 1861.

Q. What time in 1861?

A. I forget the exact month.

Q. The firm of W. & D. Urquhart was composed of W. Urquhart and yourself?

A. Yes, sir.

Q. I believe you stated that you were charged with the management of the firm?

A. Yes, sir; I was.

Q. Where did W. Urquhart reside?

A. Here in New Orleans.

Q. That was his permanent residence?

A. His permanent residence.

Q. He was the senior member of the firm?

A. *Who* was the senior member of the firm.

Q. What was his connection with the firm?

A. The same as mine. We had equal power.

Q. Did he devote his time and attention to the business or did he go to outside business?

A. No, sir; he attended to his business.

Q. That was his only business with the firm?

A. Yes, sir.

Q. So he had the management and charge also?

798 A. Yes, sir.

Q. Then you modify your statement that you was the managing partner?

A. Well, I was looked upon as the principal—as the head of the house—although I was junior. He considered me so, although he was my elder brother. He had not the experience in business that I had, he having been brought up as a lawyer.

Q. You mean to say, then, that you acted as senior member of the firm?

A. Yes, sir; although I was the junior in age.

Q. How long did the firm of W. & D. Urquhart continue?
A. Until they were wound up in bankruptcy.
Q. When was that?
A. After the war. We done no business after the war.
Q. Have you given me the date when you entered into the service of the Confederacy or about the time?
A. Well, I really entered into the service of the Confederacy on or about the 1st of September, 1862. My commission dates from 1862.
Q. You were in the State service until that time?
799 A. Until that time.
Q. Where were you stationed while in the State service?
A. I was in the field with the Louisiana troops.
Q. What regiment—what command?
A. I was on General Bragg's staff.
Q. When did you leave New Orleans?
A. About the 1st March, 1862.
Q. You were not in the service until the 1st March, 1862?
A. I was in the service of the State, but I was not in the Confederate service until September, 1862.
Q. You left New Orleans on military service about the 1st March, 1862?
A. Yes, sir.
Q. Had your previous service been in the city of New Orleans?
A. Yes, sir; in the city.
Q. You remained in the city until March, 1862?
A. Yes, sir; 1862.
Q. Where did W. Urquhart reside during the year 1861?
A. In 1861 in New Orleans.
Q. Where during the year 1862?
A. In New Orleans.
Q. And the year 1863?
A. I think he went to Europe in 1863.
800 Q. You left New Orleans in 1862?
A. In 1862.
Q. When did you return?
A. After the surrender.
Q. Not until 1865?
A. I returned to the city in July or August, 1865.
Q. You left in 1862 and did not return until 1865?
A. Yes, sir.
Q. You were with the army of Tennessee?
A. With the army of Tennessee.
Q. Between March, 1862, and 1865, when you returned *when you returned* to New Orleans, were you at any time in the State of Louisiana?
A. Never.
Q. And consequently you were not in the parish of Rapides during that time?
A. No, sir; never.
Q. When were you last in the parish of Rapides?

A. I never have been there.

Q. How does it happen you say the firm of W. & D. Urquhart continued until after the surrender? It was in existence March 15, 1865. How does it happen that this suit was instituted in
801 the name of David Urquhart?

A. Because I was in New Orleans then.

Q. Well, so was he.

A. Well, I managed everything. My brother had very little to do with the management.

Q. That is the explanation you give of that fact?

A. Yes, sir.

Q. Who is Mr. Aaron Cohen?

A. He was a ship broker from New York.

Q. Where did he live?

A. He was out here and spent six or seven months every season out here. I think New York was his home.

Q. When did you last see him?

A. I forget when I last saw him. I cannot recollect the time. When this suit was brought by Cohen it was brought through his head man, who held his power of attorney, Mr. McCord.

Q. I am not asking you about that. I am asking you when you saw Mr. Cohen.

A. I cannot say.

Q. Did you see him at the time this suit was instituted?

A. No, sir.

802 Q. You don't know whether he was in New Orleans or not?

A. I cannot tell you.

Q. Was this suit of Cohen's instituted at your instigation?

A. It was.

Q. By Mr. Elgee, as attorney?

A. By Mr. Elgee, as attorney.

Q. Did you give him the note?

A. No, sir.

Q. Did you pay any attention to the proceedings of the convention by which Louisiana seceded at the time?

A. I never went into it.

Q. It was a matter of no consequence to you, and you never paid attention to it?

A. Yes, sir; I took an interest in it.

Q. You took an interest in it, but still paid no attention to what it did?

A. I read it in the newspapers.

Q. That is what I am asking you, if you paid attention to what the convention did?

A. Yes, sir; I read it in the newspapers.

Q. Do you know how long the convention was in session?

A. No, sir; I do not.

803 Q. Do you remember anything about the passage of any law operating a stay of judicial proceedings on the part of that convention?

A. I do not.

Q. You were adjutant general on the staff of Governor Moore, the then Governor of Louisiana?

A. I was his aide; yes, sir.

Q. Of course you were generally familiar with his counsels?

A. I was familiar with what was going on in the military department.

Q. And with the advice and instruction which he gave generally to the people of Louisiana with reference to their conduct at that particular time?

A. I was aware of it.

Q. Do you know it to be a fact that Governor Moore instructed and requested the planters to retain their crops and not to ship them to New Orleans?

A. I do; it was public.

Q. That advice was sound at that time or considered so?

A. It was considered, I believe, good policy not to ship the cotton.

804 Q. You stated that the Louisiana State Bank had acquired absolutely three of the notes of Linton by discounting the same, and that they held five others as collateral security for a loan which the bank made to W. & D. Urquhart of a considerable amount, and you have further stated, I believe, that you could not see how the bank had any interest in being informed as to the proceedings which you instituted against Linton, because the bank was certain to get its money. I believe you made that statement?

A. Yes, sir.

Q. Did the bank get that money?

A. She did not.

Q. Then you were certain they would get it?

A. Yes, sir.

Q. Then you modify your statement as to that?

A. Our failure prevented her from receiving it.

Q. You do not mean to say that the bank was certain to get it; you modify that part of your statement?

805 A. At the time she discounted the notes she was certain or she would not have discounted them, but the failure of our house prevented her from getting her money.

Q. But as a fact the bank was not certain to get the money?

A. No, sir; nobody is certain when they discount.

Q. You modify your statement, then, to that extent?

A. Yes, sir; to that extent.

Q. Now, under this proceeding, which was instituted in your name to enforce this mortgage, the order of seizure and sale was granted, directing the sale of the property mortgaged for cash to pay a certain amount and upon a credit to meet the other notes which were not then due. Eight of these notes not then due were held by the Louisiana State Bank?

A. They were.

Q. Aggregating a very large amount?

A. Yes, sir; they were.

Q. Something like a $100,000?

A. Yes, sir.

806 Q. Is it not a fact that the bank was at that time largely interested in knowing when this sale would take place; was not the bank largely interested in the price that the property would bring at public sale?

A. She might have been, but never expressed it; never came near me.

Q. But is it not a fact that the bank was at that time largely interested in knowing that the sale would be made?

A. Yes, sir; she was.

Q. Is it not a fact in your experience that property sold at judicial sales under orders such as this, enforcing mortgages, frequently bring less than the amount of the mortgages?

A. Very often.

Q. Is it not a fact that at forced judicial sales property frequently brings less than its real value?

A. It is.

Q. Still, if I understand you, you instistuted this suit in which you proposed to sell this property out, after the shortest legal delay, for cash for a certain amount and for the balance on credit, and did not consider it incumbent on you to give the bank any notice of the fact that you took out these proceedings?

A. I neve- gave notice.

807 Q. You did not consider it incumbent on you to give them any notice?

A. No, sir.

Q. I believe De Choiseul was the regular attorney of the firm of W. & D. Urquhart?

A. He had a great deal of our business.

Q. He was retained generally by you?

A. No, sir.

Q. Who was the attorney generally retained for your business?

A. For our country business, Judge Elgee.

Q. And what about Mr. De Choiseul?

A. He was a friend of mine, a lawyer of not much position. I helped him along and often gave him some small matters.

Q. You were doing a commission business?

A. The commission business.

Q. Your business extended through the various States which at that time had business relations with New Orleans?

—. ——.

Q. Arkansas?

A. No, sir.

Q. North Louisiana?

A. Yes, sir; never outside of the State of Louisiana.

808 Q. You had no business connections with Mississippi or Texas?

A. No, sir; never outside of Louisiana.

Q. And never with either of the Mississippi parishes or Louisiana?

A. Yes, sir; all through Louisiana we had business.

Q. Did Mr. Elgee practice in the courts of Carroll, Concordia, Madison, and Tensas?

A. Not that I am aware of. He practiced in Rapides.

Q. Did he practice in Caddo and Bossier?

A. Not that I know of.

Q. Do you know of him practicing outside of the judicial district in — the parish of Rapides is embraced?

A. Not that I know of.

Q. Did you have any business of a legal nature in — country outside of the district, including Rapides?

A. I did.

Q. As Mr. Elgee did not practice outside of that district, so far as you are aware, you sent the business to somebody else?

A. He took charge of it, but sometimes employed some-
809 body else, but we never had a suit of any magnitude but what was submitted to him.

Q. Where did Mr. Elgee reside?

A. He resided a portion of the year in Rapides and a portion of the time in New Orleans.

Q. Is it not a fact that Mr. Elgee did a very large professional business in Rapides and the parishes comprising the same judicial district?

A. He done a very large business in these country parishes.

Q. It must have occupied his time to a very considerable extent?

A. I believe it did.

Q. And therefore he must have been a considerable portion of the time in that district?

A. He was.

Q. Do I understand you to say that nevertheless when you had legal matters in the country, even those which were in parishes far distant from those in which he practiced, that you took the trouble to send them up to him?

A. We always took his advice.

Q. Would you go up to see him?

A. He would come down when we wanted him.

810 Q. The understanding between you and Mr. Elgee was that he would abandon all his other business when you sent for him?

A. He was to come to us when we sent for him.

Q. That was the understanding?

A. Our relationship was very close. I can tell you what it was if you desire.

Q. You stated that you received an anonymous communication at some time which you in some way knew to come from Governor Wells. You have not given us the time when you received that communication. When was it?

A. It was just after the war. I could not remember. It was some time in December or about that time. I could not fix the date,

but it was after the war when that cotton came down and was seized.

Q. You say the communication was anonymous?

A. Yes, sir; it was.

Q. Therefore it was not a verbal communication?

A. No, sir.

811 Q. The communication was in writing?

A. Yes, sir.

Q. Where is it?

A. I never kept it. It was just on a strip of paper.

Q. Why do you say that it came from Governor Wells? How do you know that fact?

A. Merely suspicion.

Q. You did not know it?

A. No, sir.

Q. Then when you say that it came from Governor Wells you merely mean you had that suspicion?

A. Yes, sir.

Q. You do not know that it did come from him?

A. No, sir.

Q. You have been questioned with regard to an affidavit which is signed David Urquhart & J. Madison Wells, made before, do you remember, whom?

A. Judge Theard.

Q. That is your recollection?

A. Yes, sir.

Q. Do you know the signature of J. Madison Wells?

A. I do.

Q. Have you frequently seen him write and sign his name?

812 A. Frequently seen him.

Q. You were interrogated with regard to this affidavit. You stated that the statements made in the affidavits were true and correct as stated, and you also testified that you now reiterated the statements that the facts set forth in this affidavit were true and correct?

A. Yes, sir; I did.

Q. Do you know whether the *suit* of seizure and sale was issued under the order which you obtained from the fourth district court in case No. 14665?

A. You mean on the original three notes?

Q. Yes.

A. In March, 1861.

Q. How do you know it was issued? Did you see it issued?

A. I was present when Elgee drew the papers.

Q. I ask you about the writ. Did you see it?

A. I don't know anything about the writ. All I saw was the paper he drew up.

813 Q. Of your own knowledge, you don't know whether the writ issued or not?

A. I do not.

Q. You have never been in the parish of Rapides?

A. No, sir; I have never been there.

Q. Of your own knowledge you never knew whether the writ came into the hands of the sheriff?

A. Of my own knowledge; no, sir.

Q. Now, as you were never in the parish of Rapides, it would seem to follow that you don't know of your own knowledge that the plantation known as the Quantico plantation was ever actually seized?

A. I know it, because it was advertised.

Q. I ask you of your own knowledge do you know whether it was seized?

A. Except through the return papers, which I saw. I was not present at Rapides. I never was in Rapides.

Q. You have no personal knowledge of the fact of the seizure? Did you see the sheriff in possession of this property?

814 A. I never did.

Q. You were never on this plantation yourself?

A. I was never on the place.

Q. This affidavit sets forth that sixty-five bales of cotton, now within the jurisdiction of this court, were furtively, forcibly, and fraudulently taken from the custody of the sheriff of the parish of Rapides. Q. Did you ever know, of your own personal knowledge, that the sheriff of Rapides had any property seized of any kind?

A. I did know that he had it.

Q. Of your own knowledge?

A. Yes, sir.

Q. Now, will you be kind enough to state to me how you can know of your own knowledge that the sheriff of Rapides had possession of the property when you never were in the parish of Rapides? Do you mean to say that the sheriff held property outside of the parish of Rapides?

A. I know from my own knowledge from the papers.

815 Q. Do you know what is meant by the term "your own knowledge"?

A. No, sir; not in that way. If the words "of my own knowledge" signifies that I must have been on the place and seen the sheriff in possession, I say distinctly that I never saw him in possession.

Q. I suppose you were in the army of Tennessee?

A. Yes, sir; I was.

Q. Were you at the battle of Shiloh?

A. Yes, sir.

Q. Do you know of your own knowledge that there was a battle of Shiloh?

A. I do.

Q. You were present and saw it?

A. Yes, sir.

Q. And participated in it?

A. Yes.

Q. You know it from the evidence of your own senses, because you were there?

A. Yes, sir.

Q. Were you at the battle of Seven Pines, in Virginia?
A. No, sir; I know it was fought.
Q. Have you any knowledge of your own which you know yourself? Have you any personal knowledge that a battle
816 was fought at Seven Pines?
A. Only from the public prints.
Q. The knowledge that you have is derived from other sources than your own senses?
A. Yes, sir.
Q. But of your own knowledge you know that the battle of Shiloh was fought?
A. Yes, sir.
Q. But of your own knowledge you don't know that the battle of the Seven Pines was fought?
A. No, sir.
Q. Do you know of your own knowledge that the sheriff of Rapides had these sixty-five bales of cotton?
A. No, sir; I do not.
Q. Do you know that the sixty-five bales of cotton were taken from the Quantico plantation?
A. Yes, sir; I do, because I saw them in the press here.
Q. Do you know they were taken from the Quantico plantation?
A. Yes, sir.
Q. Did you see them taken from the Quantico plantation?
817 A. They were shipped from the steamboat to the press. They came down here.
Q. Where did you first see these bales of cotton?
A. At the press.
Q. That was the first time in your life you saw them?
A. Yes, sir.
Q. How do you know if you saw them for the first time in your life at the press that they came from Rapides? Was that the first time you saw them?
A. Yes, sir; it was.
Q. How do you know where they came from?
A. Mr. Burbridge, the supervising agent, told me.
Q. You don't know it of your own knowledge?
A. No, sir.
Q. That is the only reason you have for thinking that they came from there?
A. Yes, sir.
Q. You don't know it of your own knowledge?
A. No, sir.
Q. Do you know of your own knowledge that any cotton
818 was grown and gathered on the Quantico plantation during the years 1862, 1863, 1864, and 1865?
A. I don't know anything that occurred on the plantation.
Q. Where did you first see the cotton?
A. At Freret's press.
Q. What was its condition? How was it—loose or in bales?
A. It was in bales.

Q. You have no personal knowledge of it otherwise than as you saw it in bales?

A. In bales.

Q. So that when you swear that the statements made in this affidavit were true and correct I understand you to mean to say that the information you received led you to believe so?

A. That is, derived from others—from information derived from others, and not of any personal knowledge.

Q. Now, there is a paper which has been styled a brief. You left here on the 1st March, 1862?

A. I did.

Q. You must have gone immediately into active service.

819 When was the battle of Shiloh fought?

A. The 1st of April.

Q. You were then with the army of Mississippi?

A. Yes, sir; the army of Mississippi.

Q. You never returned to New Orleans until after the war?

A. I never did.

Q. How do you know that this property was advertised for sale?

A. I know it through Mr. Elgee, who told me so.

Q. Your only means of knowing is from the information derived from Elgee?

A. Yes, sir.

Q. You don't know it of your own knowledge?

A. No, sir.

Q. You have already stated that, except as shown by the returns and the information given to you by other persons, you have no knowledge of the seizure and what was seized?

A. No, sir; no knowledge except through others.

Q. Now, there are a number of statements set forth in this

820 brief which is signed by you. You have no knowledge of the facts set forth in that brief except as you received the information from other persons?

A. From my attorney, Elgee.

Q. No personal knowledge?

A. No, sir; no personal knowledge.

Q. Therefor- when you state that the facts you mean to say they are true, provided the information given to you is true?

A. I do.

Q. When did Judge Elgee die?

A. He died during the war.

Q. He was dead, then, when you returned to New Orleans?

A. He was dead.

Q. Did you see him at Murfreesborough?

A. He never was in the Confederacy.

Q. Did you see him after you left New Orleans?

A. I never saw him.

Q. In March, 1862?

A. I never saw him after I left.

Q. How did he tell you all these things? Did you have a seance?

A. I saw him just after that seizure.

Q. I understood you to say that the statements made in this brief——

821 A. That is, through Hyams & Jonas after the war—that cotton case. Hyams & Jonas took charge. They were my attorneys.

Q. I understood you to state that the statements made in this brief were statements that Hyams & Jonas told you were correct.

A. Yes, sir.

Q. And that is the only knowledge you have of their correctness, because Hyams & Jonas stated them to you?

A. Yes, sir.

Q. You have no personal knowledge of them?

A. No, sir.

Q. You state that the allegations made in the petition in suit No. 14665, in which you applied for the enforcement of this mortgage and the sale of the property, were substantially correct. These statements are true to the best of your knowledge and belief?

A. In regard to the seizure?

Q. No; this suit in which you attempted to foreclose the mortgage brought by Mr. Elgee.

822 A. Yes, sir.

Q. You have already stated that these allegations are true?

A. Yes, sir.

Q. Now, I understand you to state there were four notes maturing in 1861?

A. 1861—four in 1862 and four in 1863.

Q. Mr. Cohen held one?

A. The Bank of Louisiana held another. Mrs. De Boyne held one; that was A. & M. Henie's. I bought it afterwards and paid Henie. Henie transferred the note to her before it was due, and Busch held one.

Q. How long was it after the execution of these notes before the bank discounted three of them?

A. The bank discounted these notes before this—immediately after we took the mortgage.

Q. Is it not a fact that you transferred the five other notes as collateral security to the bank immediately after you took the mortgage?

A. I don't think we transferred five. It was the four notes of 1863.

823 —. Your statement, then, is that you sold to the bank three notes?

A. We sold four out and out and pledged four more of them.

Q. That was done immediately after the notes were executed?

A. Almost immediately after the notes were executed.

Q. Will you explain to me how that wholesale statement that the allegations of this petition are true, "and the statements are that Stephen Duncan Linton justly owes David Urquhart $32,000, with interest, evidence- by three promissory notes, each for $10,833.33⅓, which notes are herewith filed for reference"? How do you reconcile the statement that these allegations are true with the statements

that Mrs. De Boyne, the Bank of Louisiana, and Mr. Bush were the owners of these notes? How can both statements be true?

A. Because I had them in my possession. The Bank of Louisiana transfer-ed to me her note, and I was the custodian of Mr.
824 Busche's note and custodian of Mrs. De Boyne's note. If you will look in the records of the Bank of Louisiana you will see Mr. Elgee's receipt for that note now.

Q. You were custodian of the note which belonged to Mrs. De Boyne?

A. Yes, sir; I was.

Q. She was the owner of it?

A. Yes, sir.

Q. You were custodian of the note which belonged to Mr. Busche?

A. Yes, sir; I was.

Q. And he was the owner of it?

A. Yes, sir; he was the owner of it.

Q. The Bank of Louisiana transfer-ed to you a note which it held?

A. She did.

Q. Did the bank remain the owner of the note?

A. After the war?

Q. No; at the time, as you say, the bank transfer-ed the note to you.

A. She loaned me this note to bring this suit on.

Q. Did the note belong to the bank or did it belong to you?

A. No, sir; it belonged to the Bank of Louisiana.

Q. Then Mrs. De Boyne owned one note, Mr. Busch owned
825 one note, the Bank of Louisiana owned one note. Does it not follow, then, if that be the fact, that Mr. Linton was indebted to Mrs. De Boyne, to the Bank of Louisiana, and to Mr. Busch on these notes, they being the owners of them?

A. Ostensibly they were held by us, but these parties were really the owners of the notes—the Bank of Louisiana, Mr. Busch, and Mrs. De Boyne.

Q. So that if there be two statements—one that you were the owner of these notes, and the other that these notes were held by Mrs. De Boyne, the Bank of Louisiana, and Mr. Busche—both of these statements cannot be true?

A. The last one is the right one.

Q. But both of these statements cannot be true?

A. No, sir; we were not as particular as you are in making these statements. When we held notes for parties we very often sued on them ourselves without bringing the principal's name in.

Q. That does not change the ownership?

826 A. No, sir; it does not. If the money had been collected it would have been paid over to these different parties.

Q. Because it was due to them?

A. Yes, sir; it was due to them.

Q. It was not due to W. & D. Urquhart?

A. No, sir.

Q. Nor to David Urquhart?

A. No, sir.
Q. The indebtedness was — Busche?
A. To Busche, the Bank of Louisiana, and Mrs. De Boyne.
Q. If the indebtedness was to them it could not have been to you?
A. No, sir.
Q. And therefor- the statement in petition that Stephen Duncan Linton was indebted to you is an error?
A. It is an error so far as that is concerned.
Q. I suppose you wish to modify your statement to that extent?
A. Yes, sir; you can modify it to that extent.
Q. You have testified that some Perkins was the agent of Mrs. Linton in connection with some cotton. Now, when was that
827 cotton transaction; about what was the date of it?
A. It was after the war—some time in December, 1865, I think; I cannot swear to the date.
Q. But it was some time in 1865?
A. Yes, sir.
Q. You say Perkins was the agent of Mrs. Linton?
A. I suppose he was.
Q. When you say he was the agent you mean to say you suppose he was?
A. As he came to me in her name, saying that he was sent by her. He exhibited no powers of attorney to me.
Q. He simply told you that he was her agent?
A. Yes, sir.
Q. How long have you known Mrs. Linton?
A. I have known Mrs. Linton twenty or twenty-five years.
Q. Did you know that she was married?
A. I did.
Q. When did Stephen Duncan Linton die?
A. I cannot state.
828 Q. Was he dead in 1865?
A. I think he was. I am not prepared to state.
Q. You don't know when Stephen Duncan Linton died?
A. I do not.
Q. Do you know whether or not he was dead at the time of this cotton transaction or whether he was living?
A. I think, to the best of my knowledge, he was dead.
Q. When did the first series of the Linton notes mature?
A. Some time in 1861, I believe.
Q. Do you know what time in 1861?
A. I forget the exact maturieties.
Q. Did they all mature at the same time?
A. Within a short time of each other; different in a few weeks or days apart.
Q. What is the understanding in commercial circles as to the maturity of a note? Are there not three days of grace?
A. Yes, sir.
Q. It is not considered due until the three days are expired?
A. Yes, sir.
Q. And therefore if one of these notes on its face purports to ma-

ture on the 15th day of March, 1861, it would not be really
829 due until the 18th?

A. Yes, sir.

Q. Therefore if this petition was filed on the 15th day of March and represented that these notes were due that was an incorrect allegation?

A. I suppose so.

Q. You modify your statement?

A. I suppose so. We seized three days too soon, maybe.

Q. Now, where did Mr. Busche live?

A. In Rapides, I believe.

Q. You did not see him during the war?

A. No, sir; never.

Q. Do you remember when you first saw him after the war?

A. A short time after the war he came down here.

Q. Do you remember what time you saw him?

A. I cannot say.

Q. About 1866?

A. Some time in 1866.

Q. How did you acquire your knowledge of the fact that Mr. Busche had made some transactions with Governor Wells about this note? You said you learned it from Busche.

830 A. From Busche himself.

Q. That is the way you learned it?

A. Yes, sir.

Q. And that is the only way you learned it?

A. Yes, sir; that is the only way.

Q. And you saw him in 1866 for the first time after the war?

A. Yes, sir; 1866, I think.

Q. Now, you received some anonymous communications about some cotton, and I presume you took steps to attempt to get that cotton?

A. I did.

Q. Did anybody come to you or did you go to anybody to take such steps?

A. I went to Governor Wells.

Q. What were the first steps that you took with regard to it?

A. We went down to Judge Theard's court.

Q. That was the first thing? Well, I thought Judge Manning appeared for you before the Federal officer?

A. That was when the cotton was in the hands of the supervising agent.

Q. It came here that way?

831 A. Yes, sir; and Judge Manning went before him to show that this cotton the Government had no right on, and the supervising agent said that he would take the matter under advisement, and if the Government had no right to it he would turn it over to the parties in interest, whoever they were, and he turned it over, and then it was we took and put in our claim to stop that cotton.

Q. Then you did not at first proceeds to Judge Theard's court; you first got Judge Manning?

A. We got the cotton released from the Government before that.

Q. He was your attorney before the Federal officers?

A. Yes, sir.

Q. You said that you first went to Judge Theard's court to make this affidavit?

A. Yes, sir.

Q. You went there after you employed Judge Manning before the Federal officers?

A. Yes, sir.

Q. Did Hyams & Jonas come into the case before Judge Manning appeared before the Federal officer or afterwards.

A. Afterwards.

832 Q. Did you authorize Judge Manning to make any statement for you; were you present when he made the statement?

A. I did not.

Q. Were you present at the time?

A. No, sir; I was not.

Q. You communicated nothing to him?

A. No, sir; he just went in to defend my case.

Q. If you did not instruct him at all, how did he act for you?

A. I sent him down, but gave him no instruction.

Q. Did you give him any information?

A. I told him that this cotton was taken by the United States, and that they had no right to it.

Q. Is that all you told him?

A. Yes, sir.

Q. How was he, under that statement of facts, able to show that the United States had no interest in it and you had?

A. He was the successor in Mr. Elgee's business.

833 —. You did not tell ~~him~~ anything; you assumed that he knew you wanted it released?

A. Yes, sir.

Q. That was all you told him; you assumed he knew the balance?

A. Yes, sir.

Q. And Hyams & Jonas came in afterwards?

A. Yes, sir.

Q. On these three notes sued on in suit 14665 what amount was collected from Stephen Duncan Linton?

A. On the three notes, nothing.

Q. They were due, then, at the time you instituted these proceedings about this cotton?

A. Yes, sir; they were due.

Q. Your claim on its face shows that you alleged that you were entitled to this cotton in consequence of these three notes?

A. On these three notes.

Q. Now, if that were true, how was it that after the cotton was virtually in your hands you abandoned all claim to one-half of the proceeds of the cotton?

834 A. Mrs. Linton and her agent were here and we talked the matter over, and we agreed to divide. She felt as much aggrieved as I did that this cotton had been seized, and we agreed that we would divide the proceeds between us.

Q. Explain to me why it was that with a large indebtedness of between $30,000 and $50,000, to which, I presume, you considered yourself justly entitled, and with this cotton in your possession, to which you were justly entitled under rights arising upon these notes, that you should abandon all rights to some of this cotton.

A. I had some feeling for Mrs. Linton. She was very destitute then, and I had a great deal of friendship for her. I wanted to help her out then, and we decided that she should take a portion—to give her one-half, and we take one-half also.

Q. What was the financial condition of W. & D. Urquhart then?

835 A. Insolvent.

Q. All the assets of W. & D. Urquhart should in justice have gone to their creditors?

A. We had not gone into bankruptcy nor had not decided to go into bankruptcy.

Q. You had not assets enough to pay all your creditors?

A. We had an offer of assistance then, but we declined it.

Q. Your assets were not enough to pay your creditors?

A. No, sir; they were not.

Q. Your bankruptcy was unavoidable?

A. Yes, sir; unavoidable.

Q. Explain how it was under that condition of things you considered it right for you to abandon not only your rights, but the rights of your creditors, by giving Mrs. Linton one-half the proceeds of these sixty-five bales of cotton.

A. After the seizure was made—for the parties had the most implicit confidence in me—having these notes, I could have done
836 what I pleased with them. I could have torn them up if I like—Mr. Busche and all of them. I mean the Bank of Louisiana, Mr. Busche, myself, and my sister.

Q. Your idea is that the parties who really owned these note- were willing that you should do exactly what you saw fit to do with the notes?

A. Yes, sir; I paid these parties the whole of them—my sister, Mr. Busche, and the Bank of Louisiana. I cannot remember how much now, but I gave them each a share of what I collected on each note. I collected so much. It was a very small amount, a rediculously small amount, that I gave to each—to my sister and to Mr. Busche, who was here at the time.

Q. You did not consider that money yours you gave to them? You gave each of them a *pro rata* of what you received?

A. Yes, sir.

Q. As for Mrs. De Boyne, she being your sister, you felt
837 yourself authorized to do what you thought proper in the matter, and that if you abandoned any of her rights it was a

matter she would have considered of no consequence as between you and her?

A. Yes, sir.

Q. So also of Mr. Busche?

A. Yes, sir.

Q. The Bank of Louisiana was an incorporation?

A. Yes, sir.

Q. Consisting of stockholders and directors?

A. Yes, sir.

Q. Were your terms of relationship with the Bank of Louisiana an association equally the same as your sister and yourself?

A. I might almost say so, for I had been a director there from my twenty-first year, and the president, Mr. Montgomery, and all the director- told me to take that note and do the best I could with it.

Q. Did you consider that they authorized you to abandon any rights they held under it?

838 A. I never abandoned any rights they held under it.

Q. Were they not entitled to these sixty-five bales of cotton?

A. They were.

Q. Did you not abandon one-half the proceeds arising from the sale of that cotton?

A. I acted as their agent and thought it wise to do so.

Q. Did you not abandon one-half the proceeds of that cotton?

A. Yes, sir.

Q. That follows there was an abandonment of their rights?

A. Yes, sir.

Q. It is said that corporations have no souls. Do you consider that the Bank of Louisiana is any exception to that rule—that it has sympathy and feeling as a bank?

A. I am not prepared to pass an opinion on that subject.

Q. Now, the contract under which the bank acquired these notes as collateral security was in writing?

A. It was.

Q. Do you know where that writing is?

A. It must be among the papers of the bank—the pledge book.

Q. You have sworn positively and repeatedly that the

839 Louisiana State Bank never instituted any suit whatever against Stephen Duncan Linton in connection with these mortgages until after the war?

A. Yes, sir; until after the war.

Q. You have stated that unconditionally, without any reservation whatever.

A. Yes, sir.

Q. You were not here during the war. You were in the military service of the Confederate States. How could you know, of your own knowledge, what the bank did or did not do? You mean to say, I presume, that you don't know what they done?

A. I have no knowledge. I never looked at the records to see

whether they had made a suit or not; but, to my knowledge, they did not.

Q. When you say they never instituted any proceedings?

A. I say as far as my knowledge extends.

Q. They might have done so without your knowledge?

A. Without my knowledge, of course.

840 Q. Now, with regard to the keeper appointed by the sheriff of the parish of Rapides. You were never in Rapides?

A. No, sir.

Q. You never saw any one in actual possession of the Quantico plantation, or the property on it?

A. No, sir; never.

Q. You were not present when the appointment was made?

A. No, sir.

Q. Could you have any knowledge as to who was the keeper except so far as you have been informed by others?

A. Nothing but hearsay.

Q. You have said something about an injunction suit. The record has not been produced. Are you familiar with that suit?

A. I am.

Q. When was it instituted?

A. Shortly after our seizure. The seizure was stopped by that injunction, or the sale rather; I am not sure which.

Q. Do you know when it was instituted?

A. Very shortly afterwards, to stop the sale.

841 Q. Was that suit ever tried?

A. It never was tried.

Q. It is still pending?

A. I suppose so.

Q. You stated in your testimony-in-chief that you surrendered in your bankruptcy six or seven notes among your assets?

A. We did; yes, sir.

Q. Did they pass into the possession of the assignee?

A. I will explain to you how we surrendered.

Q. Answer my question first. Did they pass into the possession of the assignee?

A. Yes, sir; they did.

Q. Who was the assignee?

A. Norton. This pledge was made to the Louisiana State Bank according to law, and before they could close up our pledge they had to be sold by the sheriff. They had to bring a suit. They brought the suit against us and obtained judgment against us, then put the pledged notes up for sale and the contents of the pledge were offered at public auction by the sheriff, and they did not bring

842 the amount of money that was due the bank, and the bank bought these notes in and thereby became possessor. It was the legal way of coming unto possession of the note.

Q. But I ask you did the assignee take legal possession of the notes?

A. No, sir; the assignee never had possession of these notes.

Q. The bank held them all the time?

A. Yes, sir; the bank held them all the time under their pledge.

Q. Now will you explain how it is that when you went into bankruptcy you stated under oath that you had discounted all of these notes to the Louisiana State Bank?

A. I never stated that. I said that the Louisiana State Bank discounted four of these notes out and out. The other ones she took as a pledge, and after the war she sold them at public auction and became the proprietor of these notes.

Q. You do not state, then, that you had discounted these notes to the State Bank?

A. I did not state I discounted any, I think, except the four.

843 The pledge book of the bank will show. I cannot remember so many transactions.

Q. You stated under oath, then, that the bank discounted, as you believe, four of these notes?

A. I believe the bank discounted four of these notes and held the balance on pledge. The pledge book shows that.

Q. You have stated that your brother William Urquhart lived in New Orleans in 1862 and 1863?

A. In 1862 he did, but I am not certain whether he was not in Europe in 1863. He went to Europe during the war, and we did not correspond.

Q. He rema-n-d there until after the war?

A. He remained there until after the war.

Q. Did you know Mr. J. M. Lapeyerre?

A. Yes, sir; I did.

Q. Did you ever have any conversation with him about these matters before you left here to go into the war?

A. No, sir.

Q. The statement made in this affidavit and brief, to which your attention has been called, as I understand you, on informa-

844 tion communicated to you, you believed to be correct?

A. Yes, sir; I did.

Q. When was Wells appointed keeper of this property seized?

A. I don't know when he was appointed.

Q. You have no knowledge about the date of it?

A. At present I have no knowledge. My recollection now does not recall to me when he was appointed.

Witness here states that he is compelled to leave at this moment, fifteen minutes to five o'clock, the steamboat on which he had engaged homeward passage leaving at five o'clock.

845 United States Circuit Court, Eastern District of Louisiana.

Mrs. MARIE P. EVANS
vs.
DAVID URQUHART *et als.*

Testimony resumed in this case on behalf of The State National Bank, defendant, before F. A. Woolfley, Esq., special examiner, this 10th day of June, 1884. All legal exceptions reserved.

Present: James McConnell, Esq., for State National Bank, defendant; Albert H. Leonard, Esq., solicitor for complainants.

Mr. McConnell, on behalf of State National Bank, defendant, produces a certified copy of the records in the suit of David Urquhart *versus* Stephen Duncan Linton, No. 14665, fourth district of New Orleans, now No. 11573 of the present civil district court, marked.

Also the record of the suit of Aaron Cohen *versus* S. D.
846 Linton, No. 14708, fourth district court of New Orleans, being No. 11571 of the docket of the present civil district court of New Orleans.

Also the record of the suit of W. & D. Urquhart *versus* Stephen Duncan Linton, No. 14669 of the fourth district court of New Orleans, being No. 11574 of the present civil district court of New Orleans.

Also the record in the suit of Stephen Duncan Linton *versus* David Urquhart, No. 14846 of the fourth district court of New Orleans, being No. 11575 of the docket of the present civil court of New Orleans.

Also the record in the suit of The Louisiana State Bank *versus* Stephen Duncan Linton, No. 17703 of the fourth district court of New Orleans, now being No. 11572 of the docket of the present civil court of New Orleans.

847 All of which records are now offered in evidence on behalf of The State National Bank, defendant.

And it is agreed by counsel that all legal exceptions to the admissability or competency of this evidence here taken be reserved.

848 CHARLES L. C. DUPUY, a witness produced, sworn, and examined on behalf of The State National Bank, defendant, deposes and says:

By Mr. MCCONNELL:

Q. You are a resident of New Orleans?

A. Yes, sir.

Q. How long have you been so?

A. Forty-two years.

Q. You were born here?

A. No, sir; I was born in the State of Virginia. I am fifty-two years of age.

Q. Have you ever been an officer of the Louisiana State Bank, now the State National Bank of New Orleans?

A. I was an officer of the State National Bank from May, 1869, to the 1st July, 1879.

Q. Since that time you have not been connected with it?

A. No, sir.

Q. What position did you hold in that bank?

A. During all that time I was cashier.

Q. Have you ever had occasion to examine the books and
849 papers of the bank with reference to a claim made against it by Marie P. Evans?

A. At various times and on various occasions I have minutely

examined all the books, papers, and records of the bank in order to get all the information that was to be obtained from them with regard to this matter of Marie P. Evans.

Q. Will you please to state whether or not I, as the attorney of the bank, did or not ask you particularly from time to time in years past, when you were cashier of the bank, to make special examination with the view of ascertaining whether that bank has ever received any moneys or property from the Quantico plantation or otherwise claimed by Mrs. Marie P. Evans, and whether you did so and what was the result?

A. You called on me several times to make this examination. I made an exhaustive examination and gave you the results of it. I made the examination very thorough. I never was able to find that the bank had anything to do with these matters, as claimed by Mrs. Evans.

Q. Did you ever find on the books of the bank any indebtedness to Mrs. Evans, the Quantico plantation, or Stephen Duncan Linton?

A. I never found on the books of the bank any evidence whatever of any such indebtedness as you enquire of it, but I did find on the books of the bank evidence of indebtedness of Stephen Duncan Linton on eight mortgage notes. These notes were the same notes described in an act of mortgage passed before Theodore Guyol, notary public. The paraph on these notes is: "New Orleans, December 27th, 1859." These eight several notes were dated respectively on the 27th December, 1859. They were drawn by S. Duncan Linton, payable to his own order at the office of W. & D. Urquhart, in the city of New Orleans, for the sum of $10,833.33⅓ each, and bearing interest at the rate of eight per cent. per annum from maturity until paid, but all were of different maturities. The maturities were as follows:

1st note, due 10 & 13 January, 1862;
2d " 10 & 13 February, 1862;
3d " 10 & 13 March, 1862;
4th " 15 & 18 March, 1862;
5th " 10 & 13 January, 1863;
6th " 10 & 13 February, 1863;
7th " 10 & 13 March, 1863;
8th " 15 & 18 March, 1863.

I examined the act of mortgage in the office of Theodore Guyol, notary public, and found that these were eight of twelve notes executed by Linton. The four notes not owned by the bank and described in that act of mortgage were as follows: One note, due the 10 & 13 January, 1861; one note, due the 10 & 13 February, 1861; one note, due the 10 & 13 March, 1861; one note, due the 15 & 18 March, 1861, each for the sum of $10,833.33⅓. Of these last-mentioned notes due in 1861 I found no record on the books of the bank. They were never owned, according to the records of the bank, by the bank, nor were they ever pledged to the bank as collateral security for any loan.

Q. Now the other eight notes—four due in 1862 and four due in 1863?

A. The other eight notes of the bank, according to the books of the bank, came into the possession of the bank in the following manner: *One* on the 21st day of February, 1861, the bank discounted out and out the four notes due in 1862 and accepted as collateral security for pledged notes for W. & D. Urquhart the said four notes maturing in 1863. At the maturity of the note due on the 10th & 13th January, 1862, it was protested for non-payment—that is, that one note. According to the records, W. & D. Urquhart took it up as endorsers and turned round and pledged it to the bank to secure a loan to them. Later on, on the 17th March, 1866, the board of directors of the bank passed a resolution directing the president of the bank or the proper officer of the bank (I don't remember now whom) to purchase the notes which were pledged
853 by W. & D. Urquhart to the bank, which were to be sold by the sheriff in the insolvency proceedings of W. & D. Urquhart. On the 27th March, 1866, the bank bought in all the collaterals pledged by W. & D. Urquhart at the said sale, including these five mortgage notes of S. D. Linton, already described, so that the bank was then the owner of all the eight notes maturing in 1862 and 1863, being the purchaser at the sheriff sale of the notes.

Q. On the 27th March, 1866, the bank purchased how many of these said notes?

A. Five of them.

Q. You make these statements, as I understand, from your knowledge derived from a careful examination of the books of the bank?

A. From a thorough auditing of the books of the bank. When I went into the bank as cashier I audited every book of the bank back for thirty years and got an account of every piece of property belonging to that bank, and subsequently went over this ex-
854 amination when this suit was brought and informed myself very fully. I will now explain why I used the word "bank" as discounting and buying these notes. According to the records of the bank it appeared that they were originally discounted on account of its branch in Baton Rouge, but that was the same thing.

Q. Now, I repeat the question which I have heretofore asked, which is in substance this: During all this examination of the books of the bank, especially in answer to my request to that effect, with the view to find out whether the bank had ever received any money, cotton, or other property of any kind from the Quantico plantation or from any other source in which Mrs. Marie P. Evans, the complainant in this case, was or could have been interested, and what is your answer.

A. I found no evidence of any moneys or cotton or other
855 valuables ever coming into the possession of the bank applicable to the payment of these notes or the interest thereon at any time prior to the seizure of the plantation at the suit of the bank on these notes which was instituted after 1866. These notes were put in suit by the bank. All of the eight notes at one time were placed in the hands of Hyams & Jonas, attorneys, to institute a suit for the foreclosure of the mortgage.

Q. Is not that the record of the suit?

Witness being shown record No. 17703, Louisiana State Bank *versus* Stephen Duncan Linton, fourth district court of New Orleans, filed the 26th September, 1866, and signed by Hyams & Jonas, attorneys.

A. Well, I will look at these notes and see if they are the same notes. Yes; that is the suit I refer to. The notes described in that suit are the same notes.

856 Q. In other words, the books of the bank show nothing with reference to the Quantico plantation, except from 1866, when the notes were placed in the hands of Hyams & Jonas for collection?

A. Yes, sir. I did find by an examination of these records that propositions were made to buy these notes by different parties.

Q. Will you please state whether or not recently, within the last few months, there was not an accountant that visited the bank in connection with the present counsel of Mrs. Evans to examine the books of the bank, and whether you were not present when the examination was made?

A. Mr. Leonard was present; so was Mr. Hall. They appeared at the bank to examine the books of the bank and the records of the bank in order to get information relative to this matter, and I was requested to show these records to them.

857 Q. Who were you so requested by?

A. By the president of the bank, Mr. Kennedy.

Q. What instructions did Mr. Kennedy give you?

A. To give them all the information there was upon that subject.

Q. Did he not instruct you to assist them in examining every book in the bank?

A. Yes, sir; every book in the bank relative to this matter.

Q. Every book in the bank relative to these matters?

A. Yes, sir.

Q. Did you carry out that instruction?

A. Yes, sir; literally.

Q. Was there any paper or book in the bank that would throw light on this question that the bank received cotton or other property from the Quantico plantation that you did not show to Mr. Leonard and Mr. Hall?

A. I exhibited every paper and book in the bank that had
858 any bearing on the matter. I showed them the letter book and every book in the bank. There was one book that Mr. Leonard called for that had been stolen from the bank. It was a deposit ledger stolen from the bank by a negro and sold to a junk dealer, when I found it out and bought it back.

Q. Was that the only book he called for that you could not produce?

A. Yes, sir.

Q. How many visits did this accountant, Mr. Hall, who appeared on behalf of Mrs. Evans, make to the bank and how long did he stay on each occasion?

A. I think about three or four visits.

Q. On different days?

A. On different days, and stayed from one to two hours at a time.

Q. Will you please state whether a room was set apart for him to examine the books of the bank?

A. The directors' room was placed at his disposal.

Q. Mr. Leonard's?

859 A. Yes, sir.

Q. Where they were not interfered with by anybody?

A. Yes, sir; nobody interfered with them.

Q. You were there to assist them in making a thorough examination?

A. Yes, sir; that was the object of my presence with them?

Q. Will you please state whether or not the books of the bank do or not show a period of time in which the control of the bank was taken out of the possession of the directors and placed in the hands of military licquidators?

A. There was a period of time in which the bank was not subject to the management of its own officers as such. Possession of the bank was taken by the military authorities or military commissioners appointed by the military authorities here, which will appear from the record.

Q. Do you remember the dates? Can you tell by referring to the books of the bank?

860 A. Yes, sir; I can tell.

Q. Please look at the books of the bank and state.

Witness produces a book marked on the outside as "Record Book E, Louisiana State Bank."

Q. State whether that is one of the original books of the bank.

A. Yes, sir; an original book of the bank, recording the proceedings of the board of directors of the bank. I find, beginning on page 235 of that book, what purports to be a copy of a military "extract from special order No. 138, headquarters Department of the Gulf."

Q. Commence with the minutes of that meeting.

Witness reads from page 235:

"Special meeting of We-n-sday, 17th June, 1863.

"Present: J. M. Lapeyre, president; Blanc, Brother, Brugieri, Guelpi, Kennedy, and Oliver. The president laid before the board the following order, handed to him yesterday, which was

861 read and ordered to be spread on the minutes:

"*Order.*

"HEADQU-RTERS DEPARTMENT OF THE GULF,
"19TH ARMY CORPS, BEFORE PORT HUDSON, 11*th June*, 1863.

"Special order No. 138, extract 4.

"Satisfied from an examination of the report of the Louisiana State Bank, made to provost marshal general in pursuance of special order No. 87, that the said bank is insolvent, the commanding general hereby appointed Colonel Charles C. Dwight, 160th New York Volunteers; A. Miltenberger, and J. M. Lapeyre commissioners to effect the liquidation of said Louisiana State Bank (the words "State Bank" *is* repeated by mistake) and to convert into cash as speedily as may be all the assets of that corporation, including the sums that may have remained unpaid by the stockholders upon their respective shares of the capital stock, and, after providing for
862 the payment of the bill-holders, to distribute the same as now provided by law in cases of insolvency of individuals. The commissioners herein named will take possession of the effects of the Louisiana State Bank and enter on the discharge of their duties immediately.

"By command of Major General Banks.

"(Signed) RICHARD B. IRWIN,
"*A. A. General.*

"Official copy.

"HENRY L. PIERSON, JR.,
"*Captain and A. A. General.*

"Whereupon the board unanimously declarded that while submitting to the above order, which they have no power to resist, they deem it injust, oppressive, and ruinous, and solemnly protest against it on behalf of the stockholders.

"An inventory of the assets of the bank was ordered to be made with the view to hand the same to the commissioners appointed by the order, and the president was at the same time requested to exert all honorable means to have the above order rescinded or so
863 modified as to allow the licquidation of the bank to be effected in a manner less disastrous than the one pointed out by the order.

"After which the board adjourned.

"(Signed) A. BERNARD, *Cashier.*
"J. M. LAPEYERE, *President.*"

Q. What do the minutes show next in date as to when the military commissioners took possession?

A. That is shown by their own records.

Q. Is there a record kept in the bank that was then taken by these military commissioners?

A. Yes, sir.

Witness now produces a book marked "Important minutes of proceeding of the military commissioners of the Louisiana State Bank from the 18th June, 1863, to the 3d February, 1866."

Q. This is a book kept in the bank?

A. Yes, sir; that is kept in the bank and shows the proceedings of these military commissioners.

Q. You were not there and do not know that of your own
864 knowledge, but you find this book in the bank?

A. I found this book in the bank. It was in my possession all the time. I was cashier and frequently refer-ed to it.

Q. Will you please turn to the last entry of them military commissioners on the 3d February, 1866?

A. At the close of the record of their proceedings on the 3d February, 1866, is the following sentence, beginning at page 53: "The board, considering their mission ended, adjourned *sine die.*"

—. Just the time previous to that whom does it state was present?

A. They were the Honorable C. Roselius, A. Miltenberger, and J. M. Lapeyre.

Q. And the last sentence is just what you read, "The board, considering their mission ended, adjourned *sine die*"?

A. Yes, sir.

Q. Who is that signed by?

A. A. Bernard, secretary, and C. Roselius, chairman.

Q. Do you recognize the signatures to that paper that you have just read, either that of Mr. Bernard or of Mr. Roselius?

A. Well, I have seen Mr. Bernard's signature often and know it as well as I do my own, and I do know Mr. Roselius' signature.

Q. Look at the signatures throughout that book signed C.
865 Roselius and state whether they are the genuine signatures or not of C. Roselius.

A. Yes, sir; they are all the genuine signatures of C. Roselius that are here.

Q. You are very familiar with that book, are you not?

A. Yes, sir.

Q. Will you please state what you know of an act of sale of property, dated the 22nd March, 1877, by Charles L. C. Dupuy to Charles L. Robinson? What property was that?

A. That was the Quantico plantation.

Q. How did you come to be the owner of that plantation?

A. I went up and bought it in at sheriff's sale and sold it.

Q. The date of that sale by you to Mr. Robinson, by notarial act before Theodore Guyol, is the 27th March, 1877. How long previous to that had you bought it at sheriff's sale?

A. A few days before.

Q. At what suit was it that you bought it?

866 A. In the matter of this suit on these eight notes.

Q. In the suit brought by Hyams & Jonas for the State Bank?

A. Well, the citation proceeds that way on this claim of the eight notes.

Q. That was the suit of The Louisiana State Bank against Stephen Duncan Linton?

A. Well, I do not remember the title of this suit.

Q. It was the suit on these eight notes of $10,833.33⅓ each?

A. Yes, sir.

Q. When was that suit brought?

A. It appears to have been brought in 1866, in the first instance.

Q. When was it that the sheriff sold it?

A. It is stated in that act. I suppose a few days before.

Q. I see by this deed that there were proceedings also taken up there in suit No. 248 of the docket of the parish court for the parish of Rapides. That title deed shows the proceedings under which you acquired this property?

A. Yes, sir; it does.

867 Mr. McConnell, on behalf of The State National Bank, defendant, offeres in evidence the deed of sale of the property, dated the 22nd March, 1877, by Charles L. C. Dupuy to Charles L. Robinson of the Quantico plantation, which is now filed and marked Dupuy No. 1.

Cross-examination.

By Mr. LEONARD:

Q. The statement which you made with regard to the examination of these books of the bank by Messrs. Hall and Leonard you know, of course, of your own personal knowledge?

A. Yes, sir.

Q. And also as to the signature of Mr. Bernard and Mr. Roselius that you know also of your own personal knowledge?

A. Yes, sir; I know these signatures.

Q. Your statement that you bought the Quantico plantation under a certain title, which is presented here—that you know
868 also of your own personal knowledge?

A. Yes, sir.

Q. Is it not true that all the other statements you made are derived from information from the books and papers of this bank?

A. It is true. I got it from a personal examination of the books and papers, which were in my custody for ten years as the official custodian of the bank.

Q. That is the source of your information with regard to those matters?

A. Yes, sir.

By Mr. MCCONNELL:

Q. Is there in the bank anywhere, to your knowledge, the original military order No. 138, under which the bank was placed under military licquidation, as you have stated?

A. I have no recollection of ever having seen that original order—that is, I have no positive recollection of seeing it.

869 Q. You have no knowledge of it being in the bank?

A. I think that the original was issued as evidence in the different courts, and it was not brought back to the bank. That is my impression.

Q. It has not been brought back to the bank?

A. No, sir.

870 SAMUEL H. KENNEDY, a witness produced, sworn, and examined on behalf of The State National Bank, defendant, deposes and says:

By Mr. MCCONNELL:

Q. You are a resident of the city of New Orleans?

A. I am.

Q. Have you any connection with the present State National Bank?

A. I am its president.

Q. Did you have any connection with the Louisiana State Bank, of which the State National Bank is the successor?

A. I was at times a stockholder and director of that bank.

Q. Were you or not a director in the bank on the 17th June, 1863, and for some time previously?

A. Yes, sir; I was.

Q. You have heard the testimony of Mr. Dupuy with regard to the military order that was issued by General Banks under which the bank was placed under the control of military commissioners as licquidators?

A. Yes, sir; I have.

871 Q. Will you please state (as the minutes of the meeting of the directors of the bank have been just read from the book of the bank, marked E, here produced) whether the name of the Kennedy mentioned as one of the directors present on that occasion is yourself or not?

A. Yes, sir: I am the Kennedy.

Q. Will you please state whether or not these minutes as recorded in that book which have been read by Mr. Dupuy are correct and true, of your own personal knowledge?

Witness examines the minute book, marked E, of the minutes of the 17th June, 1863.

Q. State whether that is the minute book of the proceedings of the bank at that time.

A. Yes, sir; this is the regular minute book of the Louisiana State Bank kept at that time. I recollect having been present at that meeting and hearing the order described in these minutes read by which we understood the services of the directors of the

872 bank were at an end and the bank was turned over to the military commissioners.

Q. Are these entries all correct?

A. Yes, sir; I believe they are all true and correct.

Q. Did the bank, then, make that protest that is described in these minutes?

A. Yes, sir; we made it just as it is recorded here.

Q. What was the effect of the reading of that order upon the bank? Did the directors or not cease to have controle as directors, or did the military commissioners take controle from that date?

A. The military commissioners took possession, and we, the directors, retired.

Q. Did they keep or not a record of their proceedings in the bank?

A. Well, I suppose they did. I never was present at any of their meetings.

Q. Look at this book and state whether that is not the book that was kept in the bank of the proceedings of the military commissioners.

873 A. I have every reason to believe that this book is the record of the minutes of the military commission for two reasons. The first is that it is in the handwriting of J. M. Lapeyre; and, second, J. M. Lapeyre signed it as secretary—I mean this part that I see before me now (witness places his hand on page one, of the date of the 18th June, 1863, where the military commission took possession).

Q. That, you say, is in the handwriting of Mr. Lapeyre?

A. That I believe to be the handwriting of Mr. Lapeyre.

Q. Now, the signatures throughout that book of C. Roselius, one of the military commissioners, do you know his signature?

A. No, sir; I do not. I never saw him sign his name in my life.

Q. Well, any of the other commissioners?

A. No, sir; I do not know Mr. Dwight's.

Q. Was Mr. Lapeyre one of the commissioners?

A. Yes, sir.

Q. Do you see his signature there?

874 A. Yes, sir; I do.

Q. Where has that book been all the time since you have been connected with the bank?

A. Since I have been in the bank it has been in the bank as one of its books?

Q. When did the military commissioners cease to exercise controle over the bank and return the bank to the custody of its directors?

A. The 22nd January, 1866, a board of directors was elected for the bank on the order of Major General Canby, and on the 3rd of February, 1866, the military commissioners adjourned *sine die.*

Q. The order was made by General Banks?

A. Yes, sir; when it went into military possession; but General Canby, being satisfied that the bank would be in better hands than in the hands of the military commission, ordered an election of directors, and on the 22nd of January, 1866, the board of di-

875 rectors was elected. Then, on February 3d, 1866, the military commission adjourned *sine die.*

Q. Under whose controle were the assets and the affairs of the bank from the 17th June, 1863, to the 3d of February, 1863?

A. Under the controle of this military commission.

Q. Under the authority of that order which had been issued by General Banks?

A. Yes, sir.

Q. And so continued until General Canby relieved it by the order that you speak of, ordering an election of directors, on the 22nd of January, 1866?

A. Yes, sir. Then the board took possession on February 3d, when the commission adjourned *sine die.*

Q. The bank was recently served with a notice of *subpœna duces tecum* on it to produce the books, papers, letters, and documents of the bank in order that they might be examined in this suit

876 by an accountant to be appointed on behalf Mrs. Evans?

A. Yes, sir.

Q. Will you please state whether or not under that order you appointed a room in the bank for the purpose of having the books examined by the accountant appointed by Mrs. Evans?

A. Yes, sir.

Q. Did the accountant come there for that purpose?

A. Yes, sir; he did.

Q. Mr. Hall?

A. Mr. Hall.

Q. How often did he come there to examine the books and papers of the bank?

A. I don't know, but I think two or three times or more.

Q. Was the counsel, Mr. Leonard, present in the bank?

A. I did not see him; I was not present at the time.

Q. Did you not appoint a gentleman to meet the counsel of Mrs. Evans and the accountant to extend to them every courtesy?

877 A. Yes, sir; I appointed Mr. Charles L. C. Dupuy, who, having been cashier for a great many years, even before I went into the bank as president, kindly consented to serve.

Q. You have made oath in the answer in this case for the bank whether the bank ever received any assets or property from the Quantico plantation or any cotton belonging to Mrs. Evans, which is very full and specific, and I ask you now whether or not you do reiterate the facts stated in your answer as your testimony in this case.

A. I do; I have never been able to find a particle of evidence that we ever received in any shape or form anything from that plantation until it was sold under the foreclosure of the mortgage.

Q. What year was that?

A. That was 1866, I believe. If there is any evidence in the bank I have never seen it, and I do not believe there is any there.

878 Cross-examination by Mr. LEONARD:

Q. When you state above that you reiterate the facts which are sworn to by you in the answer filed in this case on behalf of the bank I suppose that you mean to say, when you say that you reaffirm these facts, that those that you stated of your own personal knowledge you so state, and those that you derived from information of others you state from information received?

A. Yes, sir; that is what I say; some of these fact- I may know of my own personal knowledge and some I may not.

The further examination of this witness is defer-ed.

879 Mr. McConnell offers in evidence the two extracts from the books of the bank, read at the examination by Mr. Dupuy, which are admitted by Mr. Leonard to be true and correct copies as taken from the books produced, said books being already offered in evidence, but Mr. Leonard having no objection to the defendants retaining the books in their possession until they are called for.

After which the taking of further testimony was postponed to Tuesday, June 17, 1884, at one o'clock p. m.

880 Mrs. MARIE P. EVANS, etc., *vs.* DAVID URQUHART *et als.* } No. 7276.

NEW ORLEANS, *June* 17, 1884.

Testimony on behalf of The State National Bank, defendant, resumed this day, at one o'clock p. m., pursuant to adjournment, there being present: James McConnell, Esq., solicitor for the State National Bank, and Albert H. Leonard, Esq., for the complainant.

CHARLES L. C. DUPUY recalled.

By Mr. MCCONNELL:

Q. Were you in the city of New Orleans in the years 1860, 1861, and 1862?

A. I was in New Orleans in the year 1860 and the beginning of 1861, to May.

Q. You left New Orleans then to go into the service of the Confederate States in the month of May, 1861?

A. Yes, sir; on the 27th May, 1861.

Q. Up to that time were you continuously in this city?

881 A. Yes, sir.

Q. And for several years before?

A. Yes, sir; a number of years before.

Q. What was your business while you were in New Orleans, in 1859, 1860, and 1861?

A. For several years, ending in 1859, I was a stock, note, and exchange broker. In the latter part of 1859 I went into the cotton and commission business, and I was in that business when the war began. From the latter part of 1859 until May, 1861, I was in the commission business.

Q. Had you occasion from your business to become acquainted with the financial standing of commercial houses in New Orleans at that time?

A. I was very familiar with the financial standing of the leading houses.

Q. What was the financial standing in New Orleans, during the years 1859, 1860, and 1861, of the house of W. & D. Urquhart?

A. They stood as one of the highest houses in New Orleans
882 in point of credit. They were reputed to be very wealthy, and had a great deal of credit.

Q. Was that the case when you left the city to go to the war?

A. Yes, sir; they still enjoyed that reputation. I desire to state that I may have made an error in my last testimony taken with regard to my purchase of the Quantico plantation. I think I stated that the sale was made under a seizure taken out in New Orleans in 1866 or 1867, when it was in fact under proceedings in the matter of the succession of Stephen Duncan Linton and a number of other cases, all given in the sheriff's title.

SAMUEL H. KENNEDY recalled.

By Mr. MCCONNELL:

Q. What was your business in the city of New Orleans in the years from 1855 to 1865?

883 A. A commission merchant.

Q. Were you constantly in this city during that period?

A. All that time except an occasional absence during the summer for a few months at a time.

Q. Was your business in circles such as would enable you to know the financial standing of the commercial firms in this city?

A. Yes, sir; to a very considerable extent.

Q. Were you acquainted with the financial standing of the house of W. &. D. Urquhart from 1855 to 1862 and 1863?

A. Yes, sir; I was from the knowledge that I acquired of business houses, being a director in the bank, and their coming up constantly for discourse and discount. My own immediate business was not connected with the Urquharts, as I was in the commission business alone.

884 Q. As a bank director you became familiar with the public standing and credit of a great many houses?

A. Yes, sir.

Q. Did you, as a bank director, become acquainted with the commercial standing of W. & D. Urquhart?

A. I did.

Q. What was their financial standing?

A. It was very high. I think it was among the very best.

Q. How was it in 1859, 1860, and 1861?

A. It was at that time very high, and stood so up to the time of the war.

Q. What time was it, if any, that their financial standing and credit ceased to be good?

A. After the war, when everything went to pieces.

Q. What year do you indicate in which their financial standing ceased to be good?

A. It commenced in 1865, 1866, and 1867.

Q. I asked you the question when you were last examined with regard to the military order No. 138, under which the control and

custody of the bank was taken out of the hands of the directors. Where is that order?

A. I don't know.

885 Q. Since your last examination have you not been requested to search in the bank for that order?

A. I have; but I could not find it.

Q. Have you searched for it?

A. Yes, sir; I have; a long time ago. It may have been among the papers of the bank, but I cannot say where it is now or where to find it.

Q. You have testified as to a copy of that order that appears upon the minutes of the bank already. I now show you a copy which is admitted of record to be a correct copy of these minutes and special order No. 138. I understand you to state that you recollect that as a true copy of the original order that was served upon the bank?

A. Well, I recollect of hearing the order read at the board, and I have every reason to believe that to be a true and correct copy.

Q. Was it read in your hearing?

A. Yes, sir; in the presence of the board.

886 Q. Were the minutes afterwards read in that meeting?

A. Yes, sir; they were read and approved.

Q. You were one of the directors?

A. Yes, sir.

Mr. McConnell here offered in evidence a copy of the original order No. 138 as before.

Q. Who were the commissioners, the whole of them, that were to liquidate the affairs of the bank under that order during the time that the bank was under the control of the military commission?

A. Captain Dwight was one, Christian Roselius, and I think J. M. Lapeyre, and A. Miltenberger was another.

Cross-examination resumed by Mr. LEONARD:

Q. You resided in New Orleans during the war?

A. Yes, sir.

Q. Were you in the parish of Rapides during the period of time from the year 1860 to 1866?

887 A. I was never in that parish in my life.

Q. You have no personal knowledge of what occurred in that parish?

A. Not the slightest.

Q. You have no knowledge of your own as to who had possession of the Quantico plantation and the property and effects thereon situate during these years?

A. Of my own personal knowledge, no, sir.

Q. Do you know, of your own personal knowledge, what became of the cotton and other property that was on this plantation during these years?

A. I have no knowledge whatever.

Q. You have no personal knowledge of the statements made in the answer as to the seizure of the Quantico plantation?

A. I was not there, and I have no personal knowledge of the seizure up there. Subsequently in 1866 the bank foreclosed its mortgage by commencing suit, and the plantation was seized and
888 sold—not in my presence, but I am familiar with the fact, from the archives of the bank.

By Mr. McConnell:

Q. You employed counsel to do so?
A. Yes, sir.
Q. Who were the counsel?
A. Hyams & Jonas and I think Judge Manning, at Alexandria.
Q. Is that your only knowledge of the seizure of the Quantico plantation?
A. That is the only knowledge that I have of that seizure.
Q. Did the bank have anything to do, to your knowledge, *of* the seizure of that plantation previous to 1866?
A. No, sir.

By Mr. Leonard:

Q. These facts which you now state on re-examination you derive from the archi*e*vs of the bank?
A. Yes, sir.

889 Mr. McConnell, on behalf of the State National Bank, offers in evidence the record of the suit entitled Marie P. Evans *versus* The United States, No. 3107, before the claims commission, to wit, the petition of Marie P. Evans in said suit and the amended petition of Marie P. Evans in said suit and the judgment and the opinion of the court thereon; also the testimony of Mrs. Marie Perkins Evans taken in said suit, as found in the printed record now filed, beginning on page 6 and ending on page 22.

890 United States of America, *Eastern District of Louisiana,* } *ss:*

I, F. A. Woolfley, special examiner, duly appointed by the court aforesaid to take the depositions of B. F. Jonas, David Urquhart, Charles L. C. Dupuy, and Samuel H. Kennedy, witnesses on the part of the State National Bank, one of the defendants in the foregoing entitled and numbered cause, do hereby certify that on the days named in the preceeding depositions I was attended by said witnesses and counsel; that the said witnesses were duly sworn and examined, their depositions reduced to writing, and their signatures to the same were waived by consent of counsel.

I further certify the Exhibit B. F. Jonas, No. 1, record No. 14665 of the fourth district court of New Orleans, entitled David Urquhart *vs.* Stephen Duncan Linton; record No. 14708 of the fourth district court of New Orleans, entitled Aaron Cohens *vs.* Stephen Duncan Linton; record No. 14669 of the 4th district court of New Orleans, entitled W. & D. Urquhart *vs.* Stephen Duncan Linton; record No.
891 14846 of the 4th district court of New Orleans, entitled Stephen Duncan Linton *vs.* David Urquhart; record No. 17703 of the

4th district court of New Orleans, entitled Louisiana State Bank *vs.* Stephen Duncan Linton; Record Book E, Louisiana State Bank, and "important minutes of proceedings of the military commissioners of the Louisiana State Bank from the 18th June, 1863, to the 3rd February, 1866", (extracts of which are certified by the undersigned); Exhibit Dupuy No. 1, record of suit of Marie P. Evans *vs.* The United States, No. 3107, before the claims commission; opinions and judgment of same, and the testimony of Mrs. Marie Perkins Evans, taken in said suit, were introduced in evidence during the taking of said deposition.

New Orleans, June 20th, 1884.

F. A. WOOLFLEY,
Special Examiner.

891½ [Endorsed:] No. 7672. U. S. circuit court, eastern district of Louisiana. Marie P. Evans *et als. vs.* David Urquhart *et als.* Testimony on behalf of the State National Bank. Filed June 21st, 1884. E. R. Hunt, clerk.

892 No. 444.

UNITED STATES OF AMERICA:

DEPARTMENT OF STATE.

[On margin in pencil:] June 17.

To all to whom these presents shall come, Greeting:

I certify that the document hereunto annexed is under the seal of the House of Representatives of the United States and is entitled to full faith and credit.

In testimony whereof I, James G. Blaine, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington this 31st of August, A. D. 1881, and of the Independence of the United States of America the one hundred and sixth.

[SEAL.] (Signed) JAMES G. BLAINE.

893 DISTRICT OF COLUMBIA, *City of Washington,* } *ss:*

In conformity to the provisions of section 906 of the Revised Statutes of the United States I, Green Adams, chief clerk of the United States House of Representatives, do certify that the annexed printed document, known and described as report 142, part 2, House of Representatives, 43rd Congress, 2nd session, relating to the matter of Marie P. Evans, is a full and true copy of the petition, proofs, and exhibits in said matter as the same remain of record in the said House of Representatives.

Witness my hand and the seal of the House of Representatives aforesaid this 31 day of August, A. D. 1881.

(Signed) GREEN ADAMS,
Chief Clerk.

894 43d Congress, 2nd Session. } HOUSE OF REPRESENTATIVES. { *Report* 142, *Part 2nd.*

MARIE P. EVANS.

February 13th, 1875—Recommitted to the Committee on War Claims and ordered to be printed.

APPENDIX.

Before the Claims Commission.

Petition.

MARIE P. EVANS *vs.* UNITED STATES. } No. 3107.

To the honorable commissioners of claims under the act of Congress of March 3rd, 1871, Washington, D. C:

The petition of Mrs. Marie P. Evans respectfully represents:

1. That she is a citizen of the United States and resides at present in New Orleans, Louisiana, with her husband, William Ridgway Evans.

2. That she is the daughter of the late Dr. Jehu Perkins, of East Baton Rouge parish, Louisiana, and was in the year 1862 the wife of S. Duncan Linton, and pos-essed of the Richland plantation, in said parish of East Baton Rouge.

3. That she has a claim against the United States for stores and property taken by the United States troops and used
895. by them off said plantation in the year 1862, at and during the second occupation in that year of Baton Rouge by the United States troops under the command of General Thomas Williams, as follows, viz:

Item No. 1. Furniture taken from the mansion house, being the complete outfit of twenty-one (21) rooms, fifteen thousand dollars, $15,000.00.

Item No. 2. Five hundred (500) hogsheads of refined sugar, at two hundred (200) dollars per hogshead, one hundred thousand dollars, $100,000.00.

Item No. 3. Nine hundred (900) barrels of molasses, at forty (40) dollars per barrel, thirty-six thousand dollars, $36,000.00.

Item No. 4. One thousand (1,000) empty barrels, at two (2) dollars per barrel, two thousand dollars, $2,000.00.

Item No. 5. Eight hundred (800) cords of dry wood, at five (5) dollars per cord, four thousand dollars, $4,000.00.

Item No. 6. Forty (40) mules, at one hundred and fifty (150) dollars each, six thousand dollars, $6,000.00.

Item No. 7. Fifteen (15) wagons, at one *one* hundred and fifty (150) dollars each, two thousand two hundred and fifty dollars, $2,250.00.

Item No. 8. Twenty (20) carts, at sixty (60) dollars each, twelve hundred dollars, $1,200.00.

895½ Item No. 9. Five thousand (5,000) bushels of corn, at one (1) dollar per bushel, five thousand dollars, $5,000.00.

Item No. 10. One hundred (100) tons fodder and hay, at twenty (20) dollars per ton, two thousand dollars, $2,000.00.

Item No. 11. Six (6) fine horses, at two hundred and fifty (250) dollars each, fifteen hundred dollars, $1,500.00.

Item No. 12. Five (5) barrels of brandy, at four hundred (400) dollars per barrel, two thousand dollars, $2,000.00.

Item No. 13. Six (6) barrels of Bourbon whiskey, at eighty (80) dollars per barrel, four hundred and eighty dollars, $480.00.

Item No. 14. Ten (10) baskets champagne, at thirty-six (36) dollars per basket, three hundred and sixty dollars, $360.00.

Item No. 15. Two (2) casks claret wine, at seventy-five (75) dollars per cask, one hundred and fifty dollars, $150.00.

Item No. 16. Two hundred (200) bottles claret wine—say fifty dollars, $50.00

Item No. 17. Forty (40) barrels rosin, at five (5) dollars per barrel, two hundred dollars, $200.00.

Item No. 18. Twenty (20) barrels pickled pork, at thirty-five (35) dollars per barrel, seven hundred dollars, $700.00.

Item No. 19. Five hundred (500) pounds bulk pork—say one hundred dollars, $100.00.

896 Item No. 20. Twenty (20) barrels pickled beef, at twenty-five (25) dollars per barrel, five hundred dollars, $500.00.

Item No. 21. Forty (40) head milch cows, at fifty (50) dollars a head, two thousand dollars, $2,000.00.

Item No. 22. One hundred and thirty-five (135) head meat cattle, at twenty (20) dollars per head, twenty-seven hundred dollars, $2,700,00.

Item No. 23. Three (3) fine buggies, at three hundred dollars (300) each, nine hundred dollars, $900.00.

Item No. 24. Gas machinery and fixtures in mansion house and outhouses, stable, and sugar-house—say five thousand dollars, $5,000.00.

Item No. 25. Engines and machinery of sugar-house and refinery damaged to the amount of seventy-five thousand dollars, $75,000.00.

Item No. 26. Library taken away and appropriated—say five thousand dollars, $5,000,00.

Item No. 27. Silver plate taken and appropriated—say twenty-five hundred dollars, $2,500.00.

Making a total of two hundred and seventy-two thousand five hundred and ninety dollars, $272,590.00.

4. That all the items in the above schedule were of the full value therein set forth and were taken from the plantation of your
897 petitioner during her absence temporarialy for the use of and were used by the United States troops stationed at Baton Rouge prior to the battle of Baton Rouge, August 5th, 1862, under command of General Thomas Williams, acting under the orders of Major General Butler, as your petitioner is informed and believes.

Your honors will notice that items Nos. 24, 25, 26, and 27 are of a different character somewhat from those that precede them and

may be inclined to treat them as simply spoilations and damages. Your petitioner is informed, however, that *that* the United States troops who committed these damages used the articles appropriated, as, *e. g.*, the tanks, &c., of the gas apparatus, for water tanks, &c.

5. That no voucher, receipt, or other writing was given for these articles above scheduled — the commanding general and the quartermaster under whose orders and by whom the articles were taken, both being killed in the battle of Baton Rouge.

6. That your petitioner was residing in France at the time the said claim accrued.

898 7. That she was the original owner of the said claim, and that she still is the owner of the same and the sole owner thereof.

8. That your petitioner remained a loyal adherent to the cause and the Government of the United States during the war, and was so loyal before and at the time of the taking of the property for which this claim is made.

9. That said claim has before been presented to the Congress of the United States (second session forty-first Congress), but that no action, favorable or unfavorable, was had by either Senate or House of Representatives so far as your petitioner is aware.

10. That Dent & Paige and R. D. Mussey, of Washington city, D. C., are hereby authorized and empowered to act as her attorneys for the prosecution of this claim.

Wherefore your petitioner prays for such action as your honorable commission, &c.

(Signed) MARIE P. EVANS.

DENT & PAIGE,
R. D. MUSSEY, *Attorneys.*

899 DISTRICT OF COLUMBIA, } ss:
Washington City and County, }

Mrs. Marie Perkins Evans, being duly sworn, deposes and says that she is the petitioner named in the foregoing petition and who signed the same; that the matters therein stated are true of the deponent's own knowledge except as to those matters which are stated on information and belief, and as to those matters she believes them to be true; and deponent further says she did not voluntarily serve in the Confederate army or navy either as an officer, soldier, or sailor or in any other capacity at any time during the late rebellion; that she never voluntarily furnished any stores, supplies, or other material aid to said Confederate army or navy or to the Confederate Government or to any officer, department, or adherent of the same in support thereof, and that she never voluntarily accepted or exercised the functions of any office whatsoever under or yealded voluntary support to the said Confederate Government.

(Signed) MARIE P. EVANS.

C. A. NEALE, *Witness.*

900 Sworn and subscribed in my presence this 23rd day of June, 1871.

(Signed) R. J. MEIGS,
[SEAL.] *Clerk Supreme Court District of Columbia,*
By R. J. MEIGS, JR.,
Assistant Clerk.

Names and Residences of Witnesses as to Loyalty.

Hon. E. B. Washburne, envoy extraordinary and minister plenipotentiary of the United States, Paris, France.
Hon. George F. Shipley, United States circuit judge, Portland, Me.
Hon. B. F. Butler, member of Congress, Gloucester, Mass.
Hon. N. P. Banks, member of Congress, Waltham, Mass.
Hon. Edward Cansinard (late sheriff), East Baton Rouge, La.

Names and Residences of Witnesses as to the Taking, &c., Set Forth in the Petition.

Hon. Edward Cansinard (late sheriff), East Baton Rouge parish, La.
John King, Baton Rouge, La.
Leonard Frank, Baton Rouge, La.
Henry Perkins, Star Hill plantation, Bayou Sara, La.
Jno. Harris, Star Hill plantation, Bayou Sara, La.
901 Ackley Perkins, Independence plantation, Bayou Sara, La.
Duncan Williams, Richland plantation.
Seth C. Farrington, late captain twelfth infantry volunteers.

Amended Petition.

MARIE P. EVANS
vs.
UNITED STATES. } No. 3107.

To the honorable commissioners of claims, under the act of Congress of March 3rd, 1871:

Your petitioner, by consent of the honorable commissioners of claims, files this her amended petition, and respectfully represents—

That at the time her property was taken by the United States Army from her plantation near Baton Rouge, Louisiana, as hereinafter set forth, she was living in the city of New Orleans and soon thereafter went to Paris, France, and did not return to this country, except for a few weeks in 1865, until 1869; that immediately on returning to this country, in 1869, she presented her claim to the Congress of the United States (December the 6th, 1869), on which
902 no action was taken; that said petition presented to Congress as aforesaid was made up from the best data she could gather and without a full conference with those who were present on the plantation at the time her property was taken.

Your petitioner further represents that after the passage of the

act of Congress of March 3rd, 1871, creating this commission, she was called to this city by telegram from her attorneys, and that the original petition presented to this honorable commission was made up by her counsel in this city on her arrival in obedience to said telegram from the petition presented to Congress as aforesaid.

That your petitioner was never fully advised as to the actual amount of her property taken until after the arrival of her principle witnesses in the case in this city, on the 7th instant (November, 1873).

That the said claim, stated by items and including all items of damage, destruction, and loss of property, is as follows:

903

1862:

No. 1.	825 hhds. of centrifugal clarified sugar of average weight of 1,300 lbs. net per hhd., being 1,072,500 lbs., at 25 cents per lb.	$268,125 00
2.	400 bbls. golden sirup (molasses) at 40 gallons per bbl., making 16,000 gallons, at $1.50 per gallon	24,000 00
	500 bbls. sugar-house molasses at 40 gallons per bbl., making 20,000 gallons, at $1.00 per gal.	20,000 00
3.	1,000 empty bbls. at $2.00	2,000 00
4.	3,000 cords dry wood at $5.00	15,000 00
5.	62 mules at $200.00	12,400 00
6.	15 wagons at $150	2,250 00
7.	3 carts at $75	225 00
8.	3 drays at $75	225 00
9.	3 gas-tanks (iron) at $100	300 00
10.	26,600 bushels of corn (in ear) at $1.00	26,600 00
11.	374 tons of fodder (corn blades) and hay at $25.00	9,350 00
12.	5 horses at $200.00	1,000 00
13.	5 bbls. brandy at $400.00	2,000 00
14.	6 bbls. old Bourbon whisky at $80.00	480 00
15.	16 baskets champagne wine at $40	640 00
16.	16 baskets hock wine at $15.00	240 00
17.	2 casks claret wine at $2.00	400 00
18.	200 bottles claret at $1.00	200 00
19.	60 bbls. pickled pork at $25.00	1,500 00
20.	62 tierces pickled beef at $40	2,480 00
21.	5,000 lbs. bulk pork at 15 cents	750 00

904

1862:

22.	15,000 ft. cypress lumber at $30.00	450 00
23.	100 head of cattle at $30	3,000 00
24.	50 sheep at $3	150 00
25.	100 hogs at $10.00	1,000 00
26.	60 sets mule harness at $20	1,200 00

1863:

27. 294 hhds. centrifugal coffee sugar of average weight of 1,400 lbs. net per hhd., making 411,600 lbs., at 15 cents	$61,740 00
28. 60 bbls. golden sirup (molasses) at 40 gallons per bbl., making 2,400 gallons, at $1.50	3,600 00
280 bbls. sugar-house molasses at 40 gallons per bbl., making 11,600 gallons, at $1.00	11,600 00
29. 12 beds, complete, mattrasses, sheets, blankets, spreads, bolsters, and pillows, at $100 per bed	1,200 00
30. 1,000 yds. velvet and English Brussels carpet at $2	2,000 00
31. 145,000 fence rails or 1,450 cords wood at $5	7,250 00
32. 6,000 sugar molds at $2	12,000 00
Total amount of claims	$495,355 00

Respectfully submitted.
(Signed) MARIE P. EVANS.

Washington, D. C., November 10th, 1873.

905 Mrs. MARIE PERKINS EVANS sworn and examined.

Commissioner ALDIS:

Q. Please state your age, residence, and occupation.

A. I have no occupation. My age is thirty-eight, and my residence is under the canopy of heaven. I have none.

Q. Well, I suppose you have some residence?

A. We are living in Washington at this moment, and will perhaps be here in a year or two. We reside here. This is our only residence.

Q. Where did you reside during the war?

A. Partly in Europe; nearly the whole of the time.

Q. What time did you leave for Europe?

A. We left for Europe in the spring of 1860, and 19th of May, I think.

Q. And you remained in Europe from May, 1860, until when?

A. We were recalled by the war and came back in September, 1860. We expected a long residence abroad and organized our household to remain many years, and, perhaps, always, at Paris, and returned to America, as we supposed, temporarily. We were recalled by private letters stating the imminent peril of war.

906 Q. Did you come back in September, 1860?

A. Yes, sir.

Q. Then you remained in this country how long?

A. I returned to Europe in the spring of 1864.

Q. Well, during that interval, between September, 1860, and the spring of 1864, where did you reside?

A. In New Orleans part of the time, and at two country-seats part of the time, and part of the time in Mexico.

Q. First state where the country-seats were.

A. One was about two miles from Baton Rouge, called the Richland plantation.

Q. And the other was where?

A. On the Lake coast—Lake Pontchartrain.

Q. During what period of time between September, 1860, and the spring of 1864, when you went to Europe, did you reside on the Richland plantation?

A. We were there in summer of 1861—the whole summer of 1861. We returned in September, 1860, to the plantation and left the plantation for the city residence in the winter, and remained in the city during the winter, and went back to the plantation in April or May following, and staid there until November, and then went back to the town house in New Orleans, where we were until
907 the taking of New Orleans by General Butler, and where we remained until the following October.

Q. And then?

A. Then we went by land back to the plantation with our servants and household retinue to the Richland plantation.

Q. And staid there how long?

A. From October, 1862, several weeks. It might have been on the wane of October or perhaps the first days of November. I am not giving exact dates, but I can come within a day or two.

Q. And then?

A. Then we took our carriage and went to the Lake Shore place by land, which was Manderville, twenty-eight or thirty miles back of Baton Rouge, on Lake Pontchartrain, and there we remained until spring.

Q. That makes the spring of 1863?

A. Yes, sir. We intended to stop there only a few days, but we were obliged to remain until spring.

Q. And then?

A. Then in April or May, I think it was, we went to a plantation belonging to the family on Red River, and we staid there during the time Generel Banks' army remained there.

908 Q. Whereabouts was that?

A. Twelve miles below Alexandria; south of it, on Bayou Bœuf, on the Cheneyville road, and in the parish of Rapides.

Q. You staid there until General Banks left?

A. Well, he left very suddenly, and we didn't consider it safe to remain any longer, and we had to leave, too, and then we attempted to follow the army. General Banks told my father he would send us back to New Orleans, and that we might go in company with Colonel Chickering's division, I think it was, and we followed the army twenty-four hours, and we found it so disagreeable trying to keep up with it, and yet keeping far enough behind to avoid the dust, which brought us with the stragglers. It was so disagreeable that my father consulted with some of the officers, and they told him the best thing we could do was to wait awhile. Then we retraced our steps and went back to the plantation and traveled all night, and remained there a little while until we had rested ourselves,

and then we concluded to go to England, and we went to Texas to get an English steamer (I have forgotten the name of the steamer),
909 and we intended to go on that steamer, and did eventually ship our luggage by that steamer to England. I think she went to Southampton, but she broke her wheel and we had to stay in Matamoras so long and it was so uncomfortable that we concluded to take one of the Federal transports to New Orleans from Brazos, Santiago, and from thence we went to Cuba, where we remained the whole winter, and finally took a steamer for Southampton and got back at last to our Paris residence and staid there until the end of the war.

Q. Was your father with you during your travel?

A. He was; except when we went to Europe we left him in Cuba. We went there to bid him good-bye.

Q. When did he die?

A. In June, 1865.

Q. Was your husband with you during all these wanderings?

A. Yes, sir; part of the time. He was in Cuba before I was.

Q. Was he with you up the Red River?

A. Yes, sir; we were on our plantation on the Red River under the special protection of General Banks. He issued a special
910 order for our protection, because General Grover's division was quartered on the plantation, and their quarters were so scattered that the seventeen or eighteen hundred bales of cotton which were on the place at the time were in such peril of being burned by the camp-fires that General Banks gave my father a special order for his protection, and they were very careful of it.

Q. Is Mr. Evans still living?

A. No, sir; he died in 1867.

Q. Is this property for which you claim in the petition property that you claim in your own right and independent of your husband?

A. Yes, sir; entirely.

Q. As coming from your father?

A. Yes, sir; from my father.

Q. And it was upon what you call the Richland plantation?

A. Yes, sir.

Q. Was that a plantation that belonged to your father?

A. Yes, sir.

Q. How did it come to you, by will or deed?

A. By deed.

Q. At what time did he deed it to you?

(Counsel produced a paper dated 5th of September, 1861, which he handed to the commissioner.)

Q. It was a marri-ge settlement?

911 A. No, sir; it was not. It was deeded to me by an uncle. It had passed out of my father's hands for a short time.

Q. When did your father deed it to your uncle?

A. I think a year or two before that—at the time of our going to Europe to reside. The place was intended for me. I was an only

child; but my father thought it would be much better for my uncle to take possession of the place in case I never returned, and so he did take it, and upon my return my uncle concluded he would much rather the place should be mine in name as well as in other things, so he just gave it to me and retired on his own little place.

Q. In the fall of 1861 you resided on the plantation?

A. Yes, sir.

Q. And the property is charged as having been taken in September, 1862?

A. Yes, sir.

Q. What was your father's name?

A. John, and Henry was his twin brother.

Q. How many slaves did you have on the plantation?

A. I don't know the number.

(Certified copy of deed from Mr. Perkins to Mrs. Linton,
912 dated the 7th of September, 1861, for two thousand five hundred acres of land, &c., put in evidence, marked Exhibit A.)

(Counsel stated that the claimant's title was undisputed until 1866, when Mr. A. S. Pike, a banker, claimed the payment of some old debt and took possession of this plantation, and has possession of it at the present time; but the claimant has a decision of the United States circuit court in her favor, and the motion is simply pending for a new trial.)

CLAIMANT: I don't understand the professional part of it, but my uncle will be able to tell you all about it. All the trouble grew out of an original mortgage note, which — the widow who owned the place before my father purchased it, a long time ago (she had some worthless sons, and this was about the last of her property that was left out of her immense fortune, which they had run through), and the interest on the note was to be paid yearly, and it was paid until the time of the war, when she didn't wish Confederate money
913 any more; and during the war my father went to Europe and died, and during this time this thing turned up and Mr. Pike took possession of it. My father had been a benefactor of Mr. Pike, and we supposed Mr. Pike would look upon him as the best friend he had, and we heard that Mr. Pike had possession. My mother and I were alone, and, knowing nothing whatever of business, it never occur-ed to us that he had a possession that he should not legally have, and it was only some years afterward that it came out by accident, else he might have had possession a long time. It was an accidental thing, a pure matter of fraudulent speculation, which has been proven.

Commissioner ALDIS:

Q. Your husband was with you, it would seem, during most of your residence at these various places during the war?

A. Yes, sir.

Q. What was he in regard to the Union, loyal or disloyal?

A. Well, I don't think he had any political sentiment at all. He was a man whose health was in a very precarious condition, and I

don't think his mental state was at all a responsible one. I
914 never heard him in a political conversation say anything at all on the subject of politics except to be very violent whenever anybody expressed an opinion. If any one expressed a disloyal opinion he would express a loyal one, and if anybody happened to express Union sentiments he would at once become a Confederate; but I think in a political point of view he was perfectly irresponsible, and I am certain that he could not have told the real difference between one side and the other if he had been questioned. It was a matter of personal bickering and petty annoyance—that was all.

Q. Did he die in Europe?

A. Yes, sir.

Q. What was the final malady that took him off?

A. Insanity; he had softening of the brain which the physician said must have begun before he was 20 years old. It seem- it was hereditary.

Q. Are you an only child?

A. Yes, sir.

Q. Now, it seems that your father's political status is deemed important by your counsel. Please state what you know of your father's political opinions.

915 A. Well, sir, being an only child, I was a great deal with my father. I was his companion from my babyhood. He used to pack me about and lug me about with him from the time I can first remember, and I remember his conversations because he was an intelligent man, and he was a man who had prominent position scientifically, professionally, politically, and agriculturally. He was a physician and a planter and had a prominent position in his State and I knew his feelings.

Q. Besides this Richland plantation which he donated to you he had other plantations?

A. He had a half interest in a plantation about 30 miles away which he owned with his brother—the Star Hill plantation; there were four residences in all.

Q. He had an interest in four plantations?

A. He hadn't a very great interest; it was an interest that he never talked of — all, because he was a very rich man, but he had an interest in the Red River plantation.

916 Q. And the whole number of his slaves was how many?

A. I think at the time of the war he had 250 slaves, perhaps, or nearer 300 on the Richland place, and 200 on the Star Hill place, and there must have been over 200 on the Red River place; I don't know how many; he was a very wealthy man. I think there was an income in the family of nearly $100,000 and perhaps more.

Q. How did he stand prior to the presidential election in 1860; up to that time what side was he on in politics?

A. He was an intimate friend of some of the leading men of the olden times. He was a very intimate friend of Henry Clay and used to entertain him in his house when he came.

Q. What were his politics?

A. He was an Old-Line Whig, but there came a time when the

Whigs did something (I don't know what they did) that displeased him. It was toward the latter part of the administration before the war came on. He was a man who loved his country above everything. He had the most patriarchal ideas—they were beautiful—he ought to have been an old patriarch; he seemed to have
917 been born out of his time. He had a great love for his country.

Q. You spoke of a period of time when he took some offence at the course of the Whigs?

A. Yes, sir; but I don't know what it was.

Q. Do you know how he voted in regard to the presidential election in 1860?

A. I do not know; perhaps he was in Europe then. I don't know when the election took place. My uncle would be able to tell you that, because whenever they voted at all they always voted together at the same place. They were inseparable always in everything. His political sentiments I knew during the whole thing, because I was his friend and confidant—the pride of his life.

Q. Now we will begin with the period when the question became agitated in Louisiana of the secession of that State from the Union. Doubtless you heard more or less from him. You talked more or less with your father on that question?

A. Yes, sir. My opportunities, although entirely social, were very good for knowing his real sentiments. I remember at the time secession took place, when the delegates were sent to
918 & 919 South Carolina, of Mr. Wm. S. Pike coming out to the plantation and trying to get my father to go with him. (He was one of the invited guests. I don't know but that he might have been a delegate.) My father considered he had the right to lecture him, being a much older man and having been a benefactor to him; and my father differed in opinion greatly with him, and he told him he was doing very wrong to go there, and refused to go there with him or to have anything to do with it. I know that; that was at the very outset. I don't think he voted at all. His opinions were entirely Union, and he asserted them whenever he had an opportunity. He was not at all afraid.

Q. During the winter of 1860 and 1861 you were residing in New Orleans?

A. Yes, sir.

Q. That was the winter in which secession was effected and the State went out of the Union?

A. Yes, sir; I remember it very well.

Q. Do you remember anything that your father said or did during that period?

A. Yes, sir. I remember his telling me I did per-
920 fectly right not to allow General Lovell to come to our reception; that he didn't wish socially to acknowledge the friendship of any one who would be so untrue to the Government as to belong to the party which he did—a party gotten up for political purposes. He looked upon the Confederacy as being founded by men who had lost their political position and who wanted to gain a

new one, and who built for themselves a sort of pedestal on which they might stand, and he considered Mr. Judah P. Benjamin at the head of it. Mr. Benjamin made a speech in which he stated it would be only a ninety-days' war, and my father said it would be a great disaster to allow such men to take a hold in the community, because the masses were always governed by intelligence of mind, and the man was too smart not to have his weight, but it was a great pity. That is what he said, and he predicted great disasters.

Q. You say you refused to receive General Lovell at your house?

A. Yes, sir.

Q. How did that come about?

921 A. He was then at the head of the Confederate troops in the city, and we received a great deal at our house, and I repeatedly refused to invite General Lovell and his wife to our receptions. I refused to give them to friends who asked me.

Q. And that was on the ground not of personal dislike to the man, but politically?

A. No, sir; I had no personal acquaintance with him at all.

Q. Is there anything further you can state in regard to your father or yourself on the ground of loyalty?

A. Yes, sir; I could state many details of loyalty both of my own and my father's. My father occupied a conspicuous position during the war, and was the intimate acquaintance of Generals Butler, Shepley, and Banks. He was with those gentlemen every day.

Q. Do you think those gentlemen would say that he was loyal?

A. Yes, sir; I know they would.

Q. You think General Butler would?

A. Yes, sir.

Q. And General Banks and General Shepley?

922 A. Yes, sir; those gentlemen were received at our house after their appearance in New Orleans. General Butler had a political acquaintance with my father which was daily, and General Shepley had a social acquaintance.

(Letters from General Butler and General Shepley offered by counsel and taken by the commissioners for reference, marked Exhibits B, C, and D.)

EXHIBIT B.

LOWELL, *June 27th*, 1871.

MY DEAR MR. MUSSEY: I remember Mrs. Evans, *née* Perkins, very well, and I know of her loyalty and that of her father, too, but I know nothing of the loss of her goods or the taking of them by order of mine. All those orders were sent to the War Department and will be found there, if any such there were.

General Halbert E. Paine, of Wisconsin, was in command at Baton Rouge at that time and will probably be able to give such information as you require.

Yours truly,

(Signed) BENJ. F. BUTLER.

Gen. R. D. Mussey, Washington, D. C.

923 EXHIBIT C.

You know, I trust, my dear madam, how much pleasure it will afford me to be of service to you in any way. I am sufficiently convinced of the loyalty of yourself and father to be willing to give you a pass to go wherever you desire. Wherever you may go you will take with you my heartfelt wishes for your happiness and my fervent prayer that you and yours may be spared further suffering in this unholy strife you have done nothing to promote.

Most sincerely and respectfully your friend,

(Signed) G. F. SHEPLEY.

Mrs. Mary Linton, Washington, D. C.

EXHIBIT D.

PORTLAND, MAINE, *June 25th*, 1871.

MY DEAR MADAM: It will afford me great pleasure to testify to your loyalty during the time of the military occupation of New Orleans. I have personal knowledge of your loyalty in act and feeling. Should you desire to take my deposition to prove that fact, I can cheerfully give it any time when your counsel will send
924 on the interrogatories. It would not be proper for me to write to the commissioners, and would do you an injury instead of benefiting you. You had better show my letter to your counsel that they may know how to frame interrogatories. I will state for their information the substance very briefly of what I could testify to. From the first occupation of New Orleans by the Union forces I was in command as military commandant of the defenses of New Orleans, and shortly after was entrusted also with the entire civil administration of the city. I became acquainted with Mrs. Duncan Linton very soon after the capture of New Orleans. From my personal acquaintance with her, and that knowledge I derived from an official position which afforded to me and required me to have more intimate knowledge of the feelings and views of prominent citizens than almost any other person, I can state positively that Mrs. Linton, now Mrs. Mary P. Evans, was a truly loyal person during the period of my acquaintance with her. So undoubted was
925 my confidence in her that I gave her permission to go outside the lines under circumstances and with privileges such as I should not have granted to any one in whom I had not unlimited confidence.

With great respect, I am, most sincerely, your friend,

(Signed) G. F. SHEPLEY.

Mrs. Mary P. Evans, Washington, D. C.

WITNESS: General Shepley was invited to my father's house in New Orleans, and we received him and several other officers, Colonel French among them, I think. We had the officers at our house two or three evenings, and there were several there whose acquaintance

I did not make, and once there was a soiree, at which gentlemen only were invited. There was a bank transaction mooted, in which my father made a friendly transaction for General Butler. I don't know exactly what it was, but Mr. Denaigre was the president of the bank, and it was connected in some way with specie which was sent away, and my father
926 mediated the transaction and had Mr. Denaigre meet these gentlemen at our house, and the transaction passed there, and General Butler was very much gratified at the result, and the specie was brought back. I don't understand the whole transaction, but I remember the circumstances very well. My father was continually doing something for them during the war. I remember one or two little circumstances which might serve as an illustration. I was on the Red River plantation, for which we had protection, when General Grover's division was there, and we knew several of the officers personally, and they dined at the house; and I remember on one occasion when we intended to have a little dinner party we could only invite a small number on certain days, because it was only a plantation cabin. It was not one of the residences of the family. We had invited several of them for the following, when I was informed by my maid that she had seen a Confederate spy, and that frightened me very much indeed, and I waked up one of
927 the sentinels. He was a German, and had fallen asleep on the front porch, and I woke him up and told him about it, and at four o'clock in the morning they all left the place. That was one reason why our stay on the Red River was shortened. We expected to remain there during the summer, but we had to leave, and went to Texas. On our way there, in passing through Houston, General Magruder issued an order of arrest for my father and Mr. Linton and my uncle, but they got out of the difficulty in some way, and when we got to Brownsville it was near sundown, and one of the Confederate officers had died, and everybody had gone to the funeral, even General Bee, and, as I spoke Spanish, I asked the Mexican there, notwithstanding the rules not to take anybody over after sundown, to take us across in a skiff, which he did, and we got over to Matamoras before General Bee returned, because if he had been there we never could have got across. When my father learned that General Banks had arrived at Brownsville he went over there and saw him, and General Banks was there talking
928 (so my father told me) of making an invasion into Texas by land, and my father drew a map of the route for him and gave him a description of the country and the manner in which he could go through Texas and the hardships and difficulties he would have to encounter. My father thought it would be impossible to invade Texas successfully in that way on account of the long marches without water and the dry grass, which no animal can live on except those born in the very country itself, and after he gave that to General Banks he told me that the General had concluded to invade Texas in a different manner, which he did afterward. It was about that time that the General told us we had better go by transport to New Orleans, and we went.

Q. Your father never held any office, civil or military, under the Confederacy?

A. Never.

Q. Did he ever take the oath of allegiance to the Confederacy?

A. No, sir; I am certain of that.

Q. Did you?

929 A. No, sir; never. We were never required to. I don't believe so; at any rate, I know we didn't do it.

Q. Did your father ever contribute anything or did you ever contribute anything to aid the Confederate cause, either in money or property?

A. No, sir; never; not a cent.

Q. Numerous appeals for voluntary contributions were presented to wealthy people there. Weren't any presented to you?

A. We never contributed anything, and we were often censured, because my father's social position was high and he had constant demands from every side, and when applications were made to him he would be continually preaching to them. He did not cease talking from the time the war commenced until it ended.

Q. You never on any occasion gave anything voluntarily, either in money or property?

A. No, sir; I never did in any way—neither my father nor myself. Being my father's only child and being very much beloved by him, it was only natural that I should have imbibed his sentiments. I never heard any other sentiments. I was told there

930 was another side, but I didn't know anything about it.

Q. Did you keep up a good social and kindly feeling with your Confederate friends?

A. Not altogether. We had many disagreeable feelings, but our position was too high for it to be felt. They were willing to allow us to do as we chose because we could afford to do it. They didn't exactly give us up because they were happy to have us there, but we had friends who would not allow any difference of opinion, and those, of course, we dropped entirely.

Q. Do you remember on any occasion that either your father received or were offered any indignity or incivility of remark or conduct from the Confederates?

A. Yes, sir; I remember that when we arrived at Houston, Texas, I had not been there more than an hour when I received a member of the staff of General Magruder, who had been a personal friend of mine (his name was Horatio Sprink), with an invitation from General Magruder to a ball, which invitation, I suppose, he extended because in the old time he had been in the regular army and

931 stationed at Baton Rouge and I think had been at some festivals at my father's home, and I declined to go to the ball, and in a short time afterwards, perhaps in an hour or two, I received another visit from, I think, a Major Carrington (who now, I believe, resides in Richmond and is president of some canal there), who reiterated the invitation and stated it would be offensive if we, as members of one of the principle familys of Louisiana, were not at that ball. I told him I didn't consider it my sphere to make it a

political point, but in a social point of view I claimed the right to decline the invitation and I did not go to the ball. It seems that refusal incensed General Magruder very much, and he issued an order for the arrest of my father, and he left Houston on account of this disturbance, and this order of arrest would have been executed at Brownsville if it had not been for the very fact of that funeral to which General Bee had gone.

Q. In regard to your residence in New Orleans while you were residing there in 1860, '61, & '62, did you suffer from any indignity in any way?

932 A. Not from the Confederates. There were little bickerings and unpleasant feelings; for instance, refusing to give an invitation to General Lovell and his wife, and refusing to have anything to do with the bazaars and all those kind of things that were gotten up for the benefit of the soldiers, and, of course, I was looked upon as inimacal. I — looked upon by my friends as not being charitable or kind, and I always said, I have my father's opinions, and I think I have a right to them, for there is no one I love or respect as much as him. He told me there was nothing he loved as much as his country, except me, and it would not be natural for me to go and work for people he did not care about; so I refused. Beyond that there was nothing. My father's life was in jeopardy during the war many times. My uncle was taken for my father. They were twin brothers, and they were taken constantly one for the other, and upon one occasion my uncle was arrested, and he certainly would have been hung for my

933 father, but it was just at the time of the fall of Fort De Russy—I suppose within the very hour of the attack on Fort De Russy—and in the confusion my uncle escaped, but it was not as Henry Perkins, but as my father, that they were going to hang him. I could tell you a dozen points of that kind. They threatened to hang my father at the time of the fall of Fort Donelson, I think it was. I had given a large reception in New Orleans, a very handsome reception. Half of the house was torn down to make room, and there was an opera performed in the house, and the people of New Orleans were very much outraged that at that moment I should give that reception. It was the last fete that was ever given in the city. My father then said (he was still preaching), I think if you could only come to your senses I think there might still be a loop-hole to get out of and peace might grow out from this very moment, and they threatened to hang him. Very well, he said; let them hang.

Q. Did your father ever subscribe to the Confederate loan?

A. Never.

934 Q. Or to the cotton loan?

A. No, sir.

Q. You never subscribed any cotton?

A. No, sir; never.

Q. Did you buy any Confederate bonds?

A. No, sir; never. One reason why my father had such a large crop of sugar in his plantation home was he would rather it would be stacked up there than receive Confederate money for it, so that I

know that he never did enter into any speculation at all. My father's political position was very prominent. He was a brave man. He was not afraid. In the first place, he was a very scientific man, and he had learned to be very positive from that; and in his political sentiments he was just as much so, and he was the leading man in the community where he lived. He was the first physician who had ever thrown out the old Spanish and French treatment in the States. He was the first planter who had planted sugar cane in the highlands, and for all those things he had to fight; and I
935 think it was his nature to fight. I believe he liked it, and then when the war began he was preaching all the time—that is, he was talking to his friends, and his foes, too—everybody; to his servants, to everybody; but he talked to no purpose. He loved the country so dearly and deplored the war so terribly. Of course, he loved the South, because his interests had been there for so many years; and he deplored the condition of the country so that I think it was the cause of his death. He had really no disease when he died. He just died at the very declaration of peace, and I think he died from a relaxation of an overtaxed mind and feelings.

COUNSEL:

Q. How long did you live on the Richland plantation?

A. Well, sir, it was a homestead all my life.

Q. You are a native of Louisiana?

A. Yes, sir.

Q. You say the plantation was about two miles from Baton Rouge?

A. Yes, sir; I think it was. I think the two-mile post was just at the head of the park.

Q. Please look at this map and state whether it is an ac-
936 curate map of the locality (producing a map and showing it to the witness).

A. That is a correct map. The Perkins road extended for about five miles right through the plantation, and was fenced on each side. The plantation laid on each side of that road, beginning at the race-track ground, down to the bridge.

(Map of Baton Rouge and vicinity produced by counsel, which was put in evidence.)

Q. Will you indicate on this map the point at which your house stood?

A. It is a- the place marked Dr. Perkins' plantation.

Q. Describe that plantation.

A. The park there was some forty-five to fifty acres of splendid oak trees. The plantation was a palace. It contained between twenty-eight and thirty rooms.

Q. Do you reccol-ect the size of the sugar-house?

A. I do. It was a sugar-house of the very largest dimensions. It had in it a refining apparatus, costing over $200,000—the machinery alone.

Q. Have you any idea of the capacity of storing sugar which that sugar-house contained?

A. I do not know how many hundred or thousand hogs-
936½ heads it would hold. I am certain it would hold three or four thousand, at any rate.

Q. Do you reccollect the size of the building for holding fodder?

A. Yes, sir. I have been in that, too, a thousand times with my father.

Q. I suppose you don't recollect the length and height in feet.

A. I don't know the dimensions positively, except I have heard my father always say, in giving orders to the servants before or after rains—I have heard him say, Take 200 feet from there, or do so and so, or fill a hundred and fifty yards with such things.

Q. Do you recollect the size of the corn-cribs?

A. I don't remember the size so far as feet are concerned, but I remember the number of them—that there were three.

Q. Was the road which was marked the Perkins road on the map inclosed with a fence?

A. Yes, sir; there was a fence on each side of it.

Q. Was the plantation inclosed by a fence?

A. Entirely so.

Q. What sort of a fence was it?

A. They were what is called worm fences, made of oak rails,
937 and there were division or partition fences also dividing the fields one from another, but, of course, the whole place was inclosed by a fence. I remember that there was a certain number of men who in the spring and fall did nothing else but renew the fences. It was their sole occupation.

Q. Was there any timber on the place?

A. Yes, sir; a great deal.

Q. How did you obtain your fuel for the sugar refinery?

A. By cutting wood from the plantation. There were some sixty or seventy hands, I suppose, that used to cut wood always the whole summer.

Q. How many hogsheads of sugar were produced generally on the plantation each year?

A. Well, sir, the place was called a thousand-hogshead sugar place, but my father didn't generally make that much, because he had introduced this refinery on the plantation, and after the crops were made he used to refine sugar during the whole summer with the exception of about six weeks, when it became so intensely hot, because refining with that open apparatus the steam was so hot
938 that in August they generally stop-ed about six weeks. These forests of timber I spoke of were on the northeast of the house, and were composed of beech, oak, and ash. It was all forest down on the Perkins road.

Commissioner ALDIS:

Q. The whole tract is, I suppose, level?

A. It is a little undulating because it is a highland place.

Q. How much of a rise is there in the land—fifty feet?

A. I really could not tell; we never had any hills as high as that. It is what they call the highlands; the place is on what is called the Highland Ridge, a natural mound on which the city of Baton Rouge is built. Our place is on that mound also, and this mound runs perhaps a hundred miles below. I know the capacity of the place. I know every inch of the soil, because I was always with my father. I was with him when he was there and when his orders were given.

COUNSEL:

Q. Do you remember anything about the number of mules that were usually kept on the place?

939 A. I could not say exactly about the number, but I know that he bought every fall of his life. He used to receive a Kentucky drover, and used to replace those that had died, and his bills were always several thousand dollars in buying mules to replace those that had died.

Q. Was there any corn raised there?

A. Yes, sir; always, and a great deal of it, because the plantation was a place with a capacity of a thousand hogsheads of sugar, and when he had this refinery put upon it to refine sugar which he used to buy from Havana by the cargo or schooner load he was obliged to raise more corn in order to work his mules during the summer, because ordinarily they were turned out to graze in the summer when they were not working. In the last years of the plantation, during the existance of the refinery (say ten or twelve years before the war or even more), of course, they raised more corn than they did in old times.

Commissioner ALDIS:

Q. Why should they need corn for this sugar refinery? Wasn't the refinery working by steam power?

940 A. Yes, sir; but there was the hauling of the sugar from Baton Rouge—two or three hundred hogsheads—and then they had to haul it back to the river. It was a continual labor.

COUNSEL:

Q. Do you remember anything about the quantity of fodder they used to put up?

A. I remember that immense house. I remember that at certain seasons of the year the negroes used to report the house full.

Q. What sort of fodder was it?

A. It was the fodder they always make there, which is fodder gathered in bundles and tied.

Q. What kind of fodder?

A. The leaves of the corn.

Q. The stalks?

A. No, sir; never.

Q. Anything besides corn fodder?

A. Yes, sir; there was hay made of pea vines.

Q. Did you keep any horses on the place?

A. Always.

Q. What number?

A. We kept a great many. They were blooded horses. There were eight carriages in the stable, and there were horses for all of them.

941 Q. What do you remember about the wines and liquors kept in the cellar of your father's place?

A. I remember that it was a very large cellar, and that there were a great variety of wines. I remember that I used to sample them and decide upon the choice wines, and in fact all the wines that they drank, except the whiskeys and brandies, of which I knew nothing.

Q. Do you remember anything about any quantity of pickled pork or pickled beef being on hand?

A. I remember those stores were always put there. They were always ordered by the wholesale, just as my father replaced the mules and refitted the harness. It was always done by the wholesale. The place was immense, and it took an immense deal of everything.

Q. Was there any cattle usually kept on the place?

A. Yes, sir; very fine cattle for our own use.

Q. Could you give any estimate of the number?

A. I could not; I don't know.

Q. Any hogs or sheep?

A. Yes, sir; a great many. I say a great many because we were supplied constantly.

942 Q. Was molasses manufactured there?

A. Yes, sir; necessarily.

Q. Now, have you any means of stating or informing us as to the quantity of sugar there was there in the summer of 1862, when General Butler took possession of Baton Rouge; have you any personal knowledge of the quantity of sugar there?

A. No, sir; not in 1862, because I was away in the winter. I left in November and they had just begun the crop, and I didn't go back until the following October.

Q. You have no means of informing us of the quantity of refined sugar that was there either?

A. Only by hearsay.

Q. Do you know anything about the number of cattle and horses, or the amount of property of any other kind that is claimed in the petition, which was there at the time General Butler took possession of the city?

A. No, sir; I know about the horses. I know there were eight carriages, and I could easily count the horses, because I knew them all—the stable horses, the horses of the household.

943 Q. Do you know anything about the quantity of wood there was on the place?

A. No, sir; I know that was always arranged and prepared by the year, a year and a half or two years before, because in refining the sugar they could not possibly use the ordinary wood. It would

not burn properly to get up enough steam. They had to use the steam all over the house for drying the sugar and whitening it and cleaning the house and everything else. I know that 1,800 or 2,000 cords of wood was nothing at all remarkable, and they often had more. These facts, perhaps, would not have been brought to my knowledge at all except that I, being an only child, used to go about on my horse with my father everywhere, and used to hear him speak of these things.

Q. Have you any knowledge of the quantity of sugar that there was there—the product of the crop of 1862—of new sugar there in the spring and winter of 1862–'63?

A. I was not in the sugar-house at all. I remember my father saying that my uncle, who made the sugar, had given up the
944 keys and was going to the upper plantation. It was the day we left for Mandeville.

Q. When was that?

A. The last of October or the first of November. It may have been in November. My reason for believing that is that when we left the house we took a large quantity of camel-ias from the garden in the open air, and I don't think they bloom before November. I thought it was earlier, but I don't think camel-ias bloom before that time. My uncle gave up the keys to my father, and said to my father, I want to go to the upper plantation to-day; and papa said, Why not remain until I come back from Mandeville? He said, Everything is arranged and the crops are all put away; and I said to my uncle, What sort of a crop have you made? and he said, Nothing very wonderful; perhaps half a crop. I didn't ask him how much.

Q. Do you know how much of the entire amount of property claimed in your petition was there at that time, in the winter of 1862–'63?

A. I know that just before we left our city residence my
945 mother had written to my uncle, requesting him to have the house put in order; that she wanted the carpets all laid and the curtains all hung in the fifty-two windows of the house, and everything was prepared for our reception, and I know when we turned away from the house to go to Mandeville (which we only did because we heard that the Union troops were about to reoccupy Baton Rouge, and we were only two miles back from the village, and mother disliked the idea of being present when they should come) General Butler had issued an order that he should come up and reoccupy the place and feed upon what he found, and we were afraid that the negroes and the whole community would be so much demoralized it would be unpleasant for us, and my father said we would stay at Mandeville until the army got fully settled there, and then we would come back to the place. So we left the house—servants and everything there—with the understanding that we should soon return.

Commissioner ALDIS:

Q. That was in the fall of 1862?

946 A. Yes, sir; the winter of 1862; when we got to Mandeville they reoccupied the place so much sooner than we supposed they would that papa only staid two nights with us and then went back to the plantation to be present when they were there, but they got there before he did and took what they wanted.

COUNSEL:

Q. You do not know, as I understand you, the quantity of any of these articles that were on the place at the time—in the fall and winter of 1862–'63?

A. The sugar was about a half a crop, my uncle said. We usually made from six hundred to eight hundred of the green kind without counting the refined.

Q. This sugar was raised on the place in 1862?

A. The green sugar, but not the refined sugar, was.

Q. Did you see anywhere—at any place—New Orleans or elsewhere—on the steamboats any of the sugar which was taken from your place?

A. Yes, sir; some. After General Butler came to New Orleans (I don't know how long—several weeks perhaps) we were
947 taking a walk—my father and I—on the levee. We went down to see if there was a boat from Baton Rouge and to hear some news from my uncle, who was an invalid on the plantation, and then the regulations were so strict that papa could not go up just then, and we saw a transport come in and we recognized a box of family plates belonging to us coming off the transport. It was a peculiar box, and we knew it as far as we could see it. It was painted green and had huge bands of iron all around it. As we approached nearer we saw hogsheads and barrels marked "Richland," with the brand which I had known and which in my childhood I had used a dozen times myself. I knew the brand perfectly well. My father went next day to the commissary department and got the box. It was a box of family plate. I asked him what about the hogsheads and barrels, and he said it was from the sugar-house, and I asked him where it was, and he said, O, it's in the commissary department. I asked him if he intended to get it out, and he
948 said, Some of these days. That is all. I don't know the quantity; there seemed to be a large quantity.

Commissioner ALDIS:

Q. You got back some of the plate?

A. Yes, sir; it was the Linton plate; the family plate was generally deposited in the bank at Baton Rouge.

Q. What officer restored that to your father?

A. It was by order of General Butler. I don't know who it was. He talked with some of the men in authority on the boat. I recollect my father saying to one of them, What are you going to do with that? The man said, What business is that of yours? He said, It belongs to me. The man said, O, no, it belongs to General Butler now. They laughed and said they got it from Pike's Bank; that he got scared and ran away, and they took the bank and its contents.

Q. It was taken, then, from Pike's Bank?

A. Yes, sir; it was. It was a box that was seven or eight feet long and four or five feet high. It took several men to move it.

Q. Did it contain silver plate?

949 A. Yes, sir; of many generations.

Q. What was the value in currency?

A. I don't know; I haven't the slightest idea.

Q. You got it all back?

A. I don't know about that. I know there were several entire services of old English plate and chafing dishes that used to hold entire legs of venison, covered with a silver cover so high that when you sat behind the cover you could not see anybody or anything.

COUNSEL:

Q. Did you recognize these hogsheads of sugar as your sugar hogsheads?

A. Yes, sir; I knew them.

(Counsel offered the oath of allegiance taken by Dr. Perkins and stated that his brother Henry was present when the oath was taken and would testify to the fact.)

WITNESS: That paper was charred in that manner in Paris at a fire. It was taken before General Shepley.

Q. Is that your father's signature to this paper?

A. Yes, sir; it is.

(Paper refer-ed to put in evidence, marked Exhibit E.)

950 EXHIBIT E.

UNITED STATES OF AMERICA,
State of Louisiana.

Oath.

REGISTER'S OFFICE, CITY OF NEW ORLEANS.

I, J. Perkins, do solemnly swear, in the presence of Almighty God, that I will henceforth faithfully support, protect, and defend the Constitution of the United States and the Union of the States thereunder, and that I will in like manner abide by and faithfully support all acts of Congress passed during the existing rebellion with reference to slaves so long and so far as not repealed or modified or held void by Congress or by decree of the Supreme Court, and that I will in like manner abide and faithfully support all proclamations of the President made during the existing rebellion having reference to slaves so long and so far as not modified or declared void by the Supreme Court, so help me God.

(Signed) J. PERKINS,

(Illegible:) "*Register.*"

951 *Questions Put to Claimant Concerning Statements Made in Special Agent Tucker's Report.*

COUNSEL:

Q. Were you acquainted with one S. Wrotnowski?

A. I was not.

Q. Did you ever have any conversation with him during the war and previous to the occupation of New Orleans by General Butler?

A. I don't recollect that I ever spoke to him in my life. I know there was such a person, as I know of many other people of Baton Rouge, but I never spoke to him in my life. I remember there was a person of that description employed as sugar-maker on my father's place who pretended to have learned a new way of making white sugar, and papa allowed him to come there, and I remember he was there two or three days and made a terrible failure and spoiled all the sugar, and my father said afterward that he could not turn the poor fellow off penniless, and he had given him a $150 and let him go; but I never have spoke to him in my life. If the man
952 was in the room now I could not distinguish him. I often talked to those employed in the sugar-house, and I don't remember his physiognomy, although I am a physiognomist.

Q. Do you remember B. T. Beauregard, a colored man?

A. Yes, sir; the negroes use to call him Bogar; he was a mulatto.

Q. What did he do before and during the war?

A. He kept a little petty grocery at the forks of the road where we used to have to pass in the carriage always; that is the reason I used to see him. He kept a few barrels of sugar sitting out before his store, and I remember he used to have the first hogshead of refined sugar at his store, or barrels of it, before it was sold out of the house, and it used to be a great matter of regret to the engineer (who was a colored man) that he never could get a pound of sugar into the market before Beauregard had it in his store. Fur-her than that I don't know anything about him.

Q. Did you ever have any conversation with him?

A. I never spoke to him in my life. It is not natural that I should. He was a very common negro man; not negro enough *enough*
953 to be civil and not white enough to be respectable.

Commissioner ALDIS:

Q. Was he a slave or free?

A. He was free.

Q. He had never been one of your father's slaves?

A. No, sir; I don't know but what he might have been born free. I don't know.

COUNSEL:

Q. Did you ever know a colored man named William Williams, who claimed to be a body servant of Mr. McHadden?

A. Yes, sir; I have seen him several times as Mr. McHadden's body

servant. I don't think I have seen him since I was fourteen years old. I am sure not since I was fifteen.

Q. Did he ever come to your house?

A. Yes, sir; up to that time. I think his master was married then, and after that he never was at the house. He occupied a different position from our own.

Q. Did your father take any of your slaves off to Texas?

A. Never.

Q. Did you take any of them off to Texas?

A. Our body servants followed us there.

Q. How many of them—how many did you take with you?

954 A. My three maids, my mother's maid, my father's valet, Mr. Linton's two valets, a coachman, a footman, and a cook.

Q. Where did you leave them?

A. At Matamoras.

Q. What did you do with them when you got them to Matamoras?

A. We gave them money and a house. Papa promised to get a schooner and send them back to New Orleans, but they prefer-ed to remain where they were, because (I will give you exactly their words) they said they would rather remain in Matamoras, which was a Mexican country, than to go back to live among poor white folks.

Commissioner ALDIS:

Q. You say you didn't take any slaves with you to Texas?

A. No, sir; except our body servants; that is all. They are all there now except those who died.

Q. Neither you nor your husband nor your father took any?

A. Yes, sir; my husband took the slaves from the upper plantation on the Red River when it was left by General Banks.

Q. How many of them were there?

955 A. My father made a speech to the servants three or four days before General Banks went away and told them we intended to go to Europe, and that when General Banks' army left they had better follow the army, those who would be allowed, but one of the officers told my father it was a great impediment to the army to have these stragglers follow them, all sorts of infirm and crippled people, women and children, and they didn't like to have them go with them if they could help it, so that a great many of these remained and those we took to Texas, and Mr. Linton's intention was to put them on a rented farm when he got to Houston.

Q. This was in the spring or fall of 1863?

A. It was in the spring of 1863, after General Banks's first expedition, but my father never had a slave to go to Texas. He never took one away, because our own slaves were at Baton Rouge. at Richland.

COUNSEL:

Q. Had you any interest in these Red River plantation slaves?

956. A. No, sir; none whatever; not the natural interest a wife would have, because the relationship existing between myself and my husband, although entirely amicable, still there was a social understanding in wealthy life there very peculiar. Mr. Linton came into the household when he married me; I never went into his household. I remained under my father's roof and used to go to my father's or uncle's purse. I never went to Mr. Linton's purse. Whatever I received from him I received as a present.

Commissioner ALDIS:

Q. You never kept house with Mr. Linton—that is, separate from your father?

A. No, sir; never.

Q. You never went up Red River without your father going with you?

A. Yes, sir; once I preceded him there, and he came two days afterward, but he was always there when I was there.

Q. Well, let us finish about the slaves going to Texas. These slaves who did go from the Red River plantation to Texas
957 wer- about how many in number?

A. I could not say—perhaps thirty or forty, perhaps fifty; I don't know. They were those who remained behind from General Banks's army, who could not go. When General Banks's army retreated they took the mules, corn, and everything of that kind, and there was no possible chance of making a crop on the place afterward, and my father foresaw they would suffer greatly, and it would be an immense expense to take away three or four hundred negroes, so that he told them that all who were able-bodied should follow General Banks, and all the able-bodied men did, but these other thirty, forty, or fifty went to Texas.

Q. By direction of Mr. Linton?

A. Yes, sir—that is, papa asked him what he thought ought to be done about it, and he said he thought they would suffer if left on the place, and he would take papa's advice. Father told him he had better go to Texas and procure a farm, which he could lease by the year or number of years, and put them on it, and when
958 they got to Houston they found a farm, but it was in a region where they raised wheat, and these negroes knew nothing at all of the cultivation of wheat, and Mr. Linton was nothing of a planter himself and knew nothing about the cultivation of wheat, and therefore we remained several days longer in Houston than otherwise on that account, for it was unpleasant for us to be there. My uncle said, "You had better sell the negroes. Call them up and ask them what you shall do." They said they had rather be sold than go back to the plantation and starve; that it would only be a matter of a few months, and as soon as the war was over they could do as they pleased. So we left, and I don't know what arrangement was made; but so far as my position is concerned and my father's, my father never had a slave to leave the Richland plantotion except those who went with the Union army, which they did do at the time of the difficulties at Port Hudson, and some of them

are in it now. With that exception they are all on the plantation at this very day.

959 COUNSEL:

Q. Did you or your father ever send any of your slaves from Richlands plantation or elsewhere to work on the rebel fortification at Port Hudson?

A. No, sir; never; not that I know of. I don't know anything at all about it. I never heard of any. I didn't know there were any fortifications. I heard of the fight at Port Hudson. We were in Texas and Mexico then.

Commissioner ALDIS:

Q. You didn't at the time hear of any servants of yours or your father's being sent up to Port Hudson to work on these fortifications?

A. No, sir; I did not.

Q. Didn't the Confederates issue orders by which they required negroes in proportion to the whole number owned by planters to go?

A. A great part of the time I was not on the place at all, and I don't know anything about the Confederate orders. During the time I was there I was outside of the Confederate lines, and didn't hear anything that was going on, but my uncle, Ackley Per-
960 kins, was agent of the plantation and lived there, and if anything of that kind took place he will know it.

Q. So far as you are concerned, you know nothing?

A. No, sir; I could not swear to anything, because I was not there.

COUNSEL:

Q. At the time you left the Richland plantation, in 1863, to go to the plantation on Red River?

A. We didn't leave the Richland plantation to go there. We left Mandeville.

Q. How many teams did you take with you from the Richland plantation?

A. I don't know the number, but we took just teams enough to make ourselves comfortable and to carry the servants' luggage and a few articles of furniture and beds, and so on, which we needed in the seacoast house, because the house was not a furnished one, and at that season of the year you cannot find furnished houses at the seacoast—in the winter—so we took those little things to furnish the cottage at Mandeville, expecting to remain there only a few weeks.

961 Q. Did you take these things from Mandeville to the Red River with you?

A. No, sir; we left them there. We intended to have them sent back to the plantation, but they were taken by a person who calls himself a gentleman, and he furnished a part of his rooms with them and has them to his day. He just simply said that he would take care of them for awhile and put them in his house.

Commissioner ALDIS:

Q. Is it a person who lives at Mandeville?

A. No, sir; he lives on the Tangipahoa river, about ten or twenty miles from Mandeville, at a place called Ponchatoula.

Q. Who is the person who has that property now?

A. I have forgotten his name. My uncle will know.

COUNSEL:

Q. How many mules or horses did you take with you from Richland plantation when you went up Red River to Quantico?

962 A. We didn't take any belonging to the estate, because those belonging to the estate went back from Mandeville to the Richland plantation with the servants. We expected to go back in — few days ourselves. Mandeville was a little village—a sea-coast residence The wagons went back to the plantation from Mandeville.

(Map put in evidence, marked Exhibit F.)

Q. Were you on the Richland plantation in the fall of 1861?

A. Yes, sir; I was.

Q. Did the teams from your plantation haul any sugar over to the New Orleans and Jackson railroad, to your knowledge, at any time?

A. No, sir; not that I know of. I certainly would have know- it if they had. I remained there until November, 1861, and I never heard of anything.

Q. What is the character of Duncan Williams, a colored man?

A. I can give you his character by my father's opinion of him. He was my father's most confidential servant, and he made him engineer of the house, with five engines in it. He was at the head of

963 all the hands and gave them orders. He was coopersmith of the first reputation and confidential servant besides. He is a man who talks but little, but is very reliable indeed. I have known him to sit up three nights without going to bed in the sugar-house, to repair broken engines. His life was passed in the sugar-house, and there was not a building made that he didn't know the size of it and width of it, and not a load of sugar came or went that he didn't know about. He could not read or write, I don't think; he said he never had time and was too lazy.

Q. Do you know of Dr. Burgess, near Port Hudson (reading from Special Agent Tucker's report)?

A. No, sir; I don't. I knew two boys I used to hear of, thriftless sons of a man who used to live near my home, and I have been told since that one of them became a physician, but I don't know that at all. I am as fully convinced as I am of anything in this world that the man never saw that plantation.

By Commissioner ALDIS:

Q. You don't know Dr. Burgess?

964 A. I have heard of him when he was a boy. I don't know him from Adam. I haven't the slightest idea of what he looks like.

By COUNSEL:

Q. Do you know Mr. Chadwick?
A. Yes, sir; I know him.
Q. And Mr. Pike?
A. Yes, sir.
Q. Where did Mr. Pike live at the beginning of the war?
A. At Baton Rouge.
Q. What was his business?
A. Well, he had received his first business position in life from my father, who thought he was a clever little boy and gave him a start in the world, and then I think my father had something to do with a bank—was president or director, or something—and gave Mr. Pike a position in there and then elevated him in his position until finally Mr. Pike became independent and became a banker himself. He might have been a banker at the time the war broke out; if not, he held the position of cashier or something
965 through my father's friendship for him. It was then that he came out and wanted my father to go with him in this Confederate delegation, and my father refused to do so, and Mr. Pike went and was feted and treated and came back in grand style.
Q. Did he hold any official position?
A. I think he did; a very conspicuous one at the time of secession.
Q. What was it?
A. I don't know the details of it, only I saw him and he was speaking of all the members whom he had met—what they said and what he said and of the speeches he had made. I think he was nominated on a committee to receive or welcome somebody. I don't know who; perhaps my uncle knows.
Q. Where did your uncle (Dr. Henry Perkins) live at the time this property was taken?
A. At Bayou Sara. He owned in partnership with my father the "Star Hill" place, 30 miles above Baton Rouge, at the forks of the Bayou Sara and Port Hudson roads.
Q. When did you marry Mr. Linton?
A. In 1855.
Q. When did you marry Mr. Evans?
966 A. In 1870.
Q. Is Mr. Evans still living?
A. Yes, sir.
Q. Have you any knowledge of any cotton left on the Quantico plantation, near Alexandria?
A. Yes, sir; there were between 1,700 and 1,800 bales left there by direction of General Banks.
Q. What became of that cotton?
A. Five or six hundred bales were stolen by General Wells, which he confessed to me.
Q. Who was he?
A. He was called Governor Wells at that time. I think he was elected Governor about the time the war closed.

By Commissioner ALDIS:

Q. Just tell the story about that.

A. Well, sir, I think he was the most dishonest man I ever knew. I told him so. Mr. Linton had indorsed some notes and those notes were in the possession of W. & D. Irkwood, of New Orleans. They held, of course, a privilege on his crop and plantation, and at the time of secession, I think the winter of 1861, perhaps, Governor Moore issued an order that
967 no cotton should be brought into New Orleans; that it was in danger, he said, of becoming a bait for the enemy, or some such nonsense, and hence all cotton remained on the plantations. Now, when General Banks went up Red River there were 1,700 or 1,800 bales on the place, 500 or 600 baled and ready for shipment, and the rest partly baled and stacked in houses. When we got up to the plantation my father sent word to David Irkwood, who was on Governor Moore's staff and a very conspicuous officer, that we could send him this cotton and that he could dispose of it and sell it to planters, who would give sugar for it, and that he could manage to make the transaction liquidate the debt. Mr. Linton never owed anybody at all, and this debt weighed heavy on him. He had peculiar ideas about it, and it became a sort of unhappiness to my father, and he wanted to relieve his mind, because it was in an unhealthy condition. Mr. Irkwood sent word that he would
968 not allow the cotton to be touched unless we sent its value in gold to him. Of course that was impossible, and we said nothing more about it. Governor Wells had been appointed as keeper as soon as General Banks made his second visit to Red River, which was in 1864. We were no longer there, and Governor Wells took possession of these five hundred cotton bales, which I proved by the steamers and the men who took it away, and even the merchants who sold it and the price it brought. I hold all those papers. I went to see Governor Wells on the subject, and he acknowledged these four or five hundred bales, but he would not acknowledge any more. He said the rest had been captured by guerrillas and burnt. I said to him, How can you set us an example, sitting in the gubernatorial chair, when you acknowledge you have taken from the man you call your best friend five hundred bales of cotton? I don't call that an honorable code. He said, Perhaps, madam, your ideas of code of honor and mine differ. Those are the last
969 words I had with him. He had all his property taken from his own name and put in his wife's name to prevent any redress.

Q. Did Governor Wells admit to you that he had taken from four to five hundred bales of your husband's cotton?

A. Yes, sir; that he had moved it as keeper.

Q. Did he say that he had accounted for it to you or anybody else?

A. I went and asked him why he didn't account for it—why the merchant hadn't received it. Well, he said, there was an upset condition of things in the country. I said, "That is very vague; that

doesn't mean anything at all." In the meantime the creditors had the plantation seized, and this cotton, at the rates of cotton then, would have paid the debt or five times over. He didn't account for it at all. He finally was pushed to the wall so very hard that I think he disgorged eleven or twelve hundred dollars—some trifling amount.

Q. Did he claim that was all the money there was in his hands?

970 A. Yes, sir; all that was in his hands; as for the rest, he said he could not give any account of it. I said, You were responsible as keeper for the whole amount; you took it from the plantations and you put it on boats in the Red River, and you acknowledge that the testimony of these men is correct and these orders are correct. He said, Yes, but everything was so upset that it was hard to tell what the guerrillas had taken and what they had left. Said I, What about these merchants who sold it? and he said, Well, that was other cotton. He was Governor then, and there was not a lawyer in the city of New Orleans who would attempt to prosecute him for me, although I went everywhere with these papers; none of them would take hold of it because he was Governor.

Q. You say he was keeper when he took these five hundred bales?

A. Yes, sir.

Q. He took them in your absence—when you were in Europe with your father and husband?

A. Yes, sir.

Q. You were not present at the time?

971 A. No, sir.

Q. Did he take them by virtue of any authority from the United States Government or was it a private thing?

A. He took them as keeper appointed by the sheriff for that debt.

Q. Then he took them under a mor gage?

A. Yes, sir; and he got the privilege of transporting them on a United States transport. That was the best of it, and he had them brought down to New Orleans, but before they got to New Orleans he managed to have them disappear and nobody could ever get hold of it.

Q. Do I understand you to say that the relations between your father and Governor Wells were those of friendship?

A. They were at one time.

Q. I mean up to that time?

A. Yes, sir; because my father believed Governor Wells to be an honest man before the war and a strong Union man.

Q. So that up to the time you started for Europe you and your father regarded him as your friend?

972 A. Not altogether up to that time. Governor Wells wanted the plantation very much and had made one or two efforts that my father didn't think looked very honest, and he said he changed his opinion on the subject. Mr. Linton thought he was one of the most honest men, and my father had quite an altercation with him on the subject.

By COUNSEL:

Q. What became of the balance of that cotton?

A. It was burned by the Confederates. A personal acquaintance and friend told me himself that he put the torch to it. I asked him the reason, and he said, Because you had all been on the plantation a short time before and when we came back there and found that everything had been left we knew, of course, what the Federals had protected we had a right to burn.

By Commissioner ALDIS:

Q. Who said this?

A. Nemours Bienvenu.

Q. Where does he live?

A. In New Orleans.

Q. What is his business?

973 A. I think he is a book-keeper since the war. He was a man of fortune before the war.

Q. Can you give me his address?

A. I cannot; he is on the levee.

Q. He says that he put the torch to your cotton?

A. He told me himself, when I came back from Europe, that he had put the torch to the cotton. Why, said I, did you commit such vandalism? Because you had been there before, and we knew what the Yankees had left we had a right to burn, he said, and because we knew if it was left it was protected, and if protected that you were Union people, and therefore we burned it.

Q. Did he say anything was burned besides the cotton?

A. I didn't ask him that.

Q. Did he burn your dwelling?

A. Yes, sir; they burned all the cabins and negroe houses—twenty-four or twenty-six in number—at Quantico, and they burned the dwelling and cotton-house. They burned everything.

Q. None of this property for which you have charged in your present claim was moved from Quantico?

974 A. No, sir.

By COUNSEL:

Q. Where did you last see your father?

A. I saw him in Havana. He came to bid us good-bye, because there was a quarantine and he had to go by New York. He could not go from New Orleans. His health was poor, and he expected to meet us shortly. I disliked to go to Europe and leave him behind very much indeed. I said to him, Papa, you are not going to stay very long. Old Mr. Corwin was there with him, and they had long talks, and he told papa he thought he ought to present a claim to the Government for the damage done to my estate, and papa said to him that the time had not come yet. I said to him, the next day, You will not stop very long in America on account of any claim or reclamation you have against the Government. You will be sure to come to us; and he said, I leave you in the arms of the Government,

and you will be just as safe there as if you were in my arms.
975 Those were the last words he ever spoke to me.

Q. What Mr. Corwin was that?

A. Thomas Corwin, of Ohio. I think he has been minister to Mexico.

By Commissioner ALDIS:

Q. Where did this conversation occur?

A. At Havana. Mr. Corwin was then in Havana. He had been an old personal friend of my father's, and we met there accidentally. He was returning from Mexico. He had been there as minister, I think. We met at the hotel, and, of course, he was very glad to see us. I think he didn't live long after that. It was just a few months before peace was declared.

By COUNSEL:

Q. Do you recollect the quality of sugar that was produced on the plantation?

A. Yes, sir; I have samples and classed it a thousand times.

Q. State whether the sample now shown you corresponds with any of the qualities produced then; and, if so, state which quality that represents.

A. (Looking at the sample of sugar produced by the coun-
976 sel.) Yes, sir; we used this quality of sugar on the table. It is called refined centrifugal. We used to use it in this way, and then there were little moulds expressly prepared in the sugar-house for cups of tea and coffee, just large enough for a lump, and this sugar was sufficiently refined to be in a mold; that used to be manufactured for the house only.

Q. Was it the refined sugar or the *refined* sugar that was of that kind?

A. The refined sugar. The new sugar was generally left in the straw-colored state.

Q. When did you purchase the sugar you refined.

A. During the summer of 1861 we refined the most of the sugar. In the winter of 1861 my father had an office in New Orleans, on Toulouse street, and used to buy sugar there. He bought sugar on the levee. He bought two cargoes from Havana.

Q. Were you in his office?

A. Yes, sir; every day nearly.

Q. Have you any knowledge of his purchases?

A. Yes, sir.

977 Q. Was any of the sugar of that kind made by refining the product of your plantation?

A. Sometimes; but generally it was from foreign-sugars—Havana sugars—that he bought on the levee.

Q. Have you any knowledge of the quantity of Cuba sugar sent up by your father to the plantation in the spring, summer, and fall of 1861?

A. I have not of the exact number, but I should judge several hundred hogsheads, because I know of one cargo, a schooner-load of

boxes of sugar (they always came in boxes from Havana), and I remember his clerk was a cousin of mine, and used to say to him so many hogsheads this morning and so many hogsheads on the boat this evening, and I used to hear these things daily; I judge several hundred.

By Commissioner ALDIS:

Q. This was in the winter of 1861, before the city was taken by the Union forces?

A. Yes, sir; in the winter of 1861 and the spring.

Q. So that your father was really, during that winter, in business as a sugar-refiner?

978 A. Well, that had been his business for years. During our stay in New Orleans that winter the refiners had become so large that he thought of setting up a business for this young cousin (who was very intelligent and who hadn't much means), and he thought the best way would be to begin with his own purchasers, and he got an offer and set up this young man.

Q. You don't mean that this young man was the owner of it?

A. No, sir; he had nothing to do with it except to hold a clerkship under my father. He was the son of a widow, and my father wanted to do something for the mother, but he could not make anything out of the boy.

Q. Your father bought Havana sugar during the fall and winter of 1861 and sent it up to the plantation to be refined?

A. Yes, sir.

Q. It was yellow sugar when he bought it, and he refined it and made as good sugar of it as this sample which has been produced?

A. Yes, sir.

979 Q. Now, that must have required a large capital in money.

A. Yes, sir; and that he had.

Q. Now, the point I am coming to is, do you know whether he brought sugar from Havana that summer or fall? Did he import it himself in the summer, fall, or winter of 1861, prior to the capture of New Orleans, on the 1st of May, 1862? For one year preceding that, during the time you lived in New Orleans—during that winter your father was there purchasing sugar—did he import it from Havana himself or buy it from those who did import it?

A. I could not say positively; on one or two occasions I know he went to Havana in person?

Q. That winter?

A. Not that winter, but he had been two or three times in his life for the purpose of purchasing sugar. Very often they would send it to him by his order after he got a familiar knowledge of the marks of the sugar in Havana by being there himself; at the time he went he always had a cargo sent from his own order, but

980 I can't say whether he ordered it specially or bought it at the levee or where he did.

Q. You perceive that if your father did go to or send to Havana during that period he would have been serving the blockade—a very illegal proceeding?

A. I can't say at all; only, so far as the illegality is concerned, I know he would not have done that for his life. In the first place, his social position was too high to admit of any change that dollars and cents could make. He had an immense credit, an immense purse.

Q. Can you recollect whether this Havana sugar that your father then refined was or was not brought from Cuba to New Orleans after the war began?

A. No, sir; I don't know at all. I have no idea.

Deposition of NEMOURS BIENVENU, a witness called and sworn for the Government of the United States, says:

My name is Nemours Bienvenu. I am thirty-three years
981 of age, and reside in New Orleans, La. I am a book-keeper by occupation. I am acquainted with Marie P. Evans, formerly wife of Dr. Duncan Linton. I have known her since 1862. I was in the habit of attending her musical entertainments in New Orleans in the winter of 1862, previous to the capture of the city by General Butler. Those entertainments were musical and dramatic—in French and English. I did take part in those dramatic exhibitions; in fact I was one of the leading ones. The plays that were performed there were French and English comedies. No, sir; no military plays. These entertainments were not attended by any Confederate soldiers or officers in uniforms, but I suppose there were Confederates there, of course, as I was one myself. Well, sir, I played there once in a uniform which I borrowed from a Confederate. It was the uniform of the French legion, but the Confederates had adopted it. We were playing that night "Invitation
982 à la Valse." Dr. Labatut, the Claiborns (W. C. Claiborn's family), Gov. Albert Voorhies's family, and several others were in the habit of attending these exhibitions. I don't remember who were the prominent Confederate officers who were in the habit of attending those exhibitions. No, sir; I never burned any one's house, and especially would not have burned Mrs. Evans's houses. No, sir; I never burned any cotton belonging to Mrs. Evans, knowing that it was hers. I do not even know where her plantation is. No, sir; I never did tell Mrs. Evans since the war that I burned her cotton because she was a Union woman. I did not burn her cotton. I never burned any one's cotton. No, sir; I did not know Mrs. Evans as a Union woman; neither did I know her as a rebel woman. I took her to be as everybody else here. She did not carry Union on her bonnet. Everybody else here were Confederates, sir, until Butler came—were supposed Confederates. I did not notice anything
983 in either Mrs. Evans's actions or language during the said entertainments that would denote that she was in favor of either the Yankees or Confederates. No, sir; if she had been known as an out-spoken Union woman those entertainments would not have been attended. She was supposed by the public to be in sympathy with the South. I heard it said during the war that Dr. Perkins, the father of Mrs. Evans, was arrested by the Confederates for trading

between the Confederate and Mexican lines without a permit. I heard he was trading supplies for cotton. I heard this in the army. Yes, sir; if Mrs. Evans had been known as an out-spoken Union woman she would have been ostracized in social circles. I would not have played at her house, sure, if I had believed she was a Union woman.

(Signed) NEMOURS BIENVENU.

Sworn to and subscribed before me November 4th, 1874.

(Signed) J. WARD GURLEY, JR.,
Special Commissioner.

984 U. S. Circuit Court, Eastern District of Louisiana.

MARIE P. EVANS *et als.*
vs.
DAVID URQUHART *et als.* } No. 7672.

Offered in evidence by the State National Bank June 17th, 1884.

(Signed) F. A. WOOLFLEY,
Special Commissioner.

985 No. 7672. Def't, June 17, 1884.

(*Judg't.*)

43D CONGRESS, 2D SESSION. } HOUSE OF REPRESENTATIVES. { *Mis. Doc.* 18, *Part* 2.

MARIE P. EVANS.

Additional Report of the Commissioners of Claims on the Claim of Marie P. Evans, of Orleans Parish, Louisiana, No. 3107.

January 18, 1875.—Referred to the Committee on War Claims and ordered to be printed.

OFFICE OF THE COMMISSIONERS OF CLAIMS,
WASHINGTON, D. C., *January* 16, 1875.

To the honorable the Speaker of House of Representatives:

The commissioners of claims herewith respectfully transmit a report in claim No. 3107, of Marie P. Evans, of Orleans parish, Louisiana, as additional to their fourth general report submitted in December last.

(Signed) ASA OWEN ALDIS,
(. do.) ORANGE FERRISS,
Commissioners of Claims.

Claim No. 3107.—Marie P. Evans, of Orleans parish, Louisiana. Total amount claimed in original petition, $272,590; in amended petition, $495,355. The claim is wholly disallowed.

Report.

Mrs. Evans is the daughter and sole heir of the late Dr. Jehu Perkins, of East Baton Rouge parish, Louisiana. Dr. Perkins was the alleged owner of a plantation situated about two miles
986 from the city of Baton Rouge, containing about two thousand five hundred acres of land, and called the Richland plantation. He, with his twin brother, Dr. Henry Perkins, assisted by another brother, Ackley Perkins, carried on this plantation before the war and during the years 1861 and 1862. The principal product of the place was sugar. Dr. Perkins also carried on the business of refining sugar upon the same place, purchasing for that purpose in New Orleans Cuba sugar, which was mixed with his own crop for refining. The claimant was at this time the wife of Stephen Duncan Linton. Mrs. Evans tells us that "Mr. Linton came into the household when he married me; I never went into his household." She had a winter residence in the city of New Orleans, and the Perkins family had two summer residences, one at the Richland plantation and the other at Mandeville, on Lake Pontchartrain. It was from the Richland plantation that the property was taken for which claim is made.

On the 19th of May, 1860, the claimant went to Europe (to Paris), where she expected to remain many years, perhaps always. She tells us that they were recalled by private letters stating the imminent peril of the war, "and came back in September, 1860." If true, this is a remarkable statement. At that early day those only who knew the settled purpose of the leaders of secession could have regarded
987 a war as imminent. Her husband was with her. In September, 1860, they returned to the Richland plantation; then went to New Orleans, and remained there the following winter, and in April or May returned again to the plantation, where they staid until November, 1861; then went back to the town house in New Orleans, where they were when the city was taken by the Federal troops and where they remained until the following October. They then returned to Richland; staid there a few weeks; then went by carriage to Mandeville, where they remained until the following spring—the spring of 1863. Then, in April or May, they went to a plantation belonging to the family on Red River, twelve miles below Alexandria, and staid there while General Banks's army remained. When the army left they followed it for a day; then turned back to the plantation, rested a short time, and then concluded to go to England, and went to Texas to take an English steamer for that purpose. Her father was with her. They shipped their luggage to Southampton by the English steamer; came back to New Orleans by a Federal transport; then went to Cuba and remained there the whole winter; took a steamer for Southampton; got back to Paris, and remained there until the end of the war. She parted with her father in Cuba. He started for Europe, and died in Liverpool in 1865. Her
988 husband, Mr. Linton, who had accompanied her to Europe, died there in 1867, and in the year 1869 she returned to the

United States and afterward married her present husband, William R. Evans.

The foregoing is the claimant's version of her movements, though in a cause pending in the parish court of the parish of Rapides, La., entitled "Succession of Stephen Duncan Linton," etc., Mrs. Evans is a witness, and testifies that she, with her husband, went from Texas to Matamoras, Mexico, and thence to Cuba, and from there to France, where Mr Linton continuously resided until his death, visiting New Orleans for a few weeks in November, 1865.

The petition was filed on the 26th day of June, 1871, and the case first heard by the commissioners on the 10th of November, 1873, at which time an amended petition was offered, increasing the claim from $272,590, the amount originally claimed, to $495,355. In the meantime our special agent, Mr. Tucker, had reported to us the result of inquires regarding the claim; but, as his report was not accompanied by any depositions, the only sworn testimony in the case was that produced by and on the part of the claimant. Nevertheless, immediately on the close of the claimant's testimony we were urged to report the claim to Congress, and unusual and per-
989 sistent efforts made to induce such report. For various reasons we thought the claim should be thoroughly investigated. We propose now to consider the case as it stood when first submitted by the claimant and a report solicited. To entitle the claimant to any relief from this commission she must first establish by satisfactory evidence the important fact that she remained during the war a loyal adherent to the cause and the Government of the United States. If she claims the property through her father, then his loyalty must be established. The principal items of the claim are sugar, molasses, wood, mules, corn, fodder, cattle, fence rails, and sugar molds.

On the 6th of September, 1861, the Richland plantation was conveyed by Ackley Perkins by deed of gift to Mrs. Evans, then Mrs. Linton. She was asked when her father deeded the place to her uncle, and answered "a year or two before that." The most of the sugar alleged to have been taken, which is by far the largest item of the claim, is said to have been of the crop of 1861. The father and uncles were carrying on the plantation and all through the evidence the property is spoken of as belonging to Jehu Perkins. Duncan Williams, a former slave of Jehu Perkins and the principal witness on the part of the claimant to the taking of the
990 property, swears that Dr. Jehu Perkins in 1862 gave him a deed of 132 acres of land, part of the Richland plantation. It looks, therefore, as if the father and uncles owned or had an interest in it. Mrs. Evans, however, avers in her petition that she was the original owner of the claim. There is evidence to show that Dr. Jehu Perkins had a reputation as a Union man. Dr. Henry Perkins claims for himself to have been loyal to the Union. Mrs. Evans says she never gave anything voluntarily, either in money or property, to aid the Confederate cause, and adds: "Being my father's only child and being very much beloved by him, it was only natural that I should have imbibed his sentiments. I never heard

any other sentiments. I was told that there was another side, but I didn't know anything about it." This is substantially all the claimant says of her own loyalty, and, what is remarkable, a careful perusal of the 204 pages of the case printed in her behalf fails to disclose a single fact, incident, or circumstance occurring during the war and testified to by any one with whom she was personally acquainted previous to 1862 that in the slightest degree tends to establish her loyalty. We repeat, not one word to the effect indicated is proved as stated.

991 The case as first presented is remarkable, not for what is proved but rather for what is not proved. The only allusion made to her loyalty, personally and individually, by any witness who knew her throughout the war was by her uncle, Ackley Perkins, and all he says is embodied in the following extract from his testimony:

Q. Did you ever talk with Mrs. Evans, the claimant, on the subject to know how she felt?

A. I saw her only once during that time, and she was in favor of the Union. She said if we had a war it would ruin us, and she was in favor of the Union.

Q. That was before the war began?

A. Yes, sir.

Q. That is all you know of her, through any conversation with her?

A. Yes, sir; that is all.

Upon this evidence and the testimony of Judge Shepley, who was military Governor of New Orleans under General Butler, and who made her acquaintance after the fall of New Orleans and knew her only for a part of the year 1862, and who was fully impressed evidently by what Mrs. Evans told him—that she was thoroughly loyal to the Union cause—we were expected to be satisfied with the proof of loyalty. Had the claim been for a mule only instead of

992 for property to the value of nearly half a million of dollars, we should have rejected it for want of satisfactory proof of loyalty. Hereafter the case will be considered in view of all the testimony, not only that on the part of the claimant, but as well that taken in behalf of the Government.

Mrs. Evans, as a witness, loses no opportunity to remind us of the high social position of her family and great wealth of her father, as the following extract from her testimony will show:

I remember his conversations, because he was an intelligent man, and he was a man who had a prominent position scientifically, professionally, politically, and agriculturally. He was a physician and a planter, and had a prominent position in his State. * * * He had an interest in four plantations. He had not a very great interest. It was an interest he never talked of at all, because he was a very rich man. * * * At the time of the war he had 250 slaves, perhaps, or nearer 300, on the Richland place, and 200 on the Star Hill place, and there must have been over 200 on the Red River place. I don't know how many. He was a very wealthy

man. I think there was an income in the family of nearly $100,000, and perhaps more. * * * He was a man who loved his
993 country above everything. He had the most patriarchal ideas. They were beautiful. He ought to have been an old patriarch. He seemed to have been born out of his time. * * * My father occupied a conspicuous position during the war, and was the intimate acquaintance of General Butler, Shepley, and Banks. He was with those gentlemen every day. * * * We never contributed anything (to the Confederacy), and we were often censured, because my father's social position was high, and he had constant demands from every side. * * *

Q. Did you keep up a good social and kindly feeling with your Confederate friends?

A. Not altogether. We had many disagreeable feelings, but our position was too high for it to be felt. They were willing to allow us to do as we chose because we could afford to do it. They did not exactly give us up, because they were happy to have us there, but we had friends who would not allow any difference of opinion, and those, of course, we dropped entirely. * * * They threatened to hang my father at the time of the fall of Fort Donelson, I think it was. I had given a large reception in New Orleans, a very handsome reception. Half of the house was torn down to make room, and there was an opera performed in the house, and the people of
994 New Orleans were very much outraged that at that moment I should give that reception. It was the last fête that was ever given in that city. * * * My father's political position was very prominent. He was a brave man; he was not afraid. In the first place he was a very scientific man * * * and he was the leading man in the community where he lived. * * * He had an immense credit; an immense purse.

These extracts are given, not for the purpose of calling attention to the inordinate vanity and pride of family exhibited by the claimant, but, in connection with other evidence, to show how unsafe it would be to place implicit confidence in her statement of facts.

In 1861 Jehu Perkins, if not bankrupt, was uncomfortably annoyed by his creditors. If the wolf was not at his door the sheriff was. The Richland estate was sold by the sheriff of the parish of East Baton Rouge, as the property of Jehu and Henry Perkins, for $100,000 and adjudicated to Ackley Perkins. This, then, was Ackley Perkins's title to the Richland place, which he conveyed September 6, 1861, to Mr. Evans, a title which Mrs. Evans would have us understand was obtained by deed from her father one or two years previously. If such a deed was
995 given it has the appearance of one of those family arrangements familiars to lawyers, frequently made by insolvent debtors to defeat or delay importunate creditors, especially as the sheriff says Jehu and Henry Perkins were then regarded in Baton Rouge as "hopelessly insolvent." There is other evidence to show the embar-assed pecuniary condition of Dr. Jehu Perkins at this time. Yet Mrs. Evans tells us he owned six or seven

hundred slaves, "was a very rich man," and that there was an income in the family of about $100,000, and in 1861 "had an immense credit." Mrs. Evans also says: My father never had a slave to go to Texas. He never took one away because our own slaves were in Baton Rouge, at Richland. In this connection it is well to note the language of Dr. Henry Perkins, who, when asked whether any slaves were sent away from the Richland plantation, answers, No, sir; I say it positively—cross my heart—there were no slaves sent from Richland. I took my own slaves and I sent them.

What are the facts? Several colored men, and other witnesses on the part of the Government, show these statements of the claimant and her uncle to be untrue. Randall Fields, a former slave on Richland, says Dr. Jehu Perkins took him and thirteen others from Richland in the fall of 1862 and carried them to Texas, and

996 about one hundred slaves from Star Hill at the same time, and sold them all in Texas. Frederick Claiborne, a former slave and house servant of Dr. Jehu, says the doctor took thirty-five slaves from Richland and sent them to Texas and sold them. Nat. Fields, another slave of Dr. Jehu Perkins, on Richland, says Dr. Jehu told him in Texas to keep the Yankees from taking him. Richard Harris, a former slave of Mr. Linton, tells the story of a large number of slaves being sent from the Richland plantation to work on the rebel fortifications at Port Hudson, and subsequently taken to Texas by Perkins and sold. John O. Conner, postmaster at Baton Rouge, says the general report was that Dr. Jehu Perkins had taken his negroes to Texas and sold them. Allen Fields, a former slave of Dr. Perkins, says the Richland slaves were taken from Port Hudson to Texas. Enoch Elliott, a slave of Mr. Linton's, and who was on Richland plantation, was sent to Star Hill plantation, staid four weeks, and then handcuffed with William James, Charles Foster, Monroe Williams, and others, all belonging to Dr. Jehu Perkins except himself, and all of them plantation hands from Richland, and sent to Bayou Sara jail, there kept a day or two, when Dr. Jehu and Henry Perkins took them to Texas. The witness says:

997 Dr. Jehu Perkins went on with us to Houston, Tex., and there sold all of us at auction. We were put upon the block and sold. I was sold to a man by the name of John Iden. It was in April, 1863. I was a field hand on the Richland plantation.

Martha Slaughter, a former slave of Jehu, says her husband was taken from Richland to Texas and sold. Dr. Louis E. Burgess, a physician, was at Star Hill in the spring of 1863 when Henry Perkins took all the negroes from there and as many as he could from Richland, mostly men, drove them to Texas, sold them, and bought cotton with the money. Some of the negroes were handcuffed. The witness never heard of Dr. Perkins's loyalty until Port Hudson was captured. William James, a former slave on Richland plantation, testifies that he and other colored people from Richland were handcuffed, taken to Texas, and sold April 9, 1863. He says that Dr. Perkins was present when he (witness) was "cried off at auction."

We have said that Dr. Jehu Perkins had the reputation of a Union man. Several witnesses so testify. A much larger number of witnesses, however, testify that he was in sympathy with the cause of the Confederacy, and was regarded as a good Confederate. From the whole evidence it is highly probable his real position was
998 best stated by the colored witness, Henderson Atkins, when he says:

Old Master Jehu went for a kind of Union man, but he never stuck up to anything; he was first one side and then the other.

And by John O. Conner, the postmaster at East Baton Rouge, who says:

He was regarded as a good rebel when in the rebel lines and a good Yankee when in the Yankee lines.

Dr. Henry Perkins, his twin brother, who swears to his own and his brother's loyalty, we find engaged in cotton transactions with the Confederate authorities. He was at one time distrusted by the Confederates, as appears by a letter from Colonel Broadwell, chief of the cotton bureau, dated November 28, 1863, to Captain Black, in which he writes: The transaction with Perkins was made here, subject to the approval of Lieutenant-General Smith. You will see by the inclosed papers that it is now canceled. General Taylor reports Dr. Perkins disloyal.

Whichever side Henry Perkins really favored, it is certain he was not unwilling to aid the Confederacy if there was money in it. In a letter to Colonel Broadwell, dated October 20, 1863, he offers to deliver 1,600 bales of cotton in Texas for a like number of bales in Louisiana, provided he is permitted to export it, and adds:

999 I promise to invest the proceeds of this cotton immediately in such army supplies as you need and deliver them on Red River, at Shreveport or Alexandria, receiving in payment cotton at 25 cents per pound, which cotton I am to be permitted to export in the same manner as the first lot.

It was probably this transaction that was canceled.

Among the exhibits filed in the case is an oath taken in the city of New Orleans by Jehu Perkins to support the Constitution of the United States, abide by and faithfully support all acts of Congress and all proclamations of the President having reference to slaves. The paper is partly destroyed by fire and the date burned off. If it was taken before he took his slaves to Texas the sale of these chattels on the auction block shows how well he kept it, and, whether taken before or after that disposition of his negroes, their sale shows the little faith and respect he had for the proclamation of emancipation, which had been issued long before that time. The movement of the Perkins family all indicated a desire to get out of and beyond Federal rule. Similar movements marked the conduct of the large slaveholders of the South who sympathized with secession and who were desirous of saving their slave property. Hundreds of this class of people fled to Texas, while Union people wel-
1000 comed the approach of the Union Army and sought shelter within its protecting power.

In the succession suit Mrs. Evans says they were driven from East

Baton Rouge by the United States Army, and went to Rapides parish upon the assurance of General Banks that he should not invade that section. She does not mean by this that she was driven by force, but that she voluntarily retired from their presence. If in sympathy with the Union cause would she not have shown it by her acts in welcoming our forces, visiting their hospitals, and aiding the sick and wounded—services that loyal Union women rendered so often and so well? On the contrary, she did precisely what all who were Confederates at heart then did. She moved away and fled from the approach of the Yankees.

The alleged loyalty of the elder Perkinses, the father and uncle, has been put prominently forward by counsel throughout the entire prosecution of the case. It was certainly not that kind of loyalty that brought down upon them the anathemas and vengeance of the Confederates. It did not prevent their giving aid and comfort to the Confederacy. They were not slow, even after the emancipation proclamation, to handcuff and imprison their slaves, send them to Texas, and there dispose of them on the auction block and (in the case of the father) with the proceeds seek a home in a foreign
1001 country. It was not that kind of loyalty that sought shelter and protection within the Federal lines and rejoiced when the Union arms were victorious and mourned at their defeat, but it is the loyalty that we are not permitted to lose sight of and in which it is sought to envelop as with a family garment the whole Perkins family, who are a race unto themselves and out of which the daughters do not go when they marry.

In her petition the claimant informs us that she will call as witnesses, to prove that she remained a loyal adherent to the cause of the Union, Hon. E. B. Washburne, envoy extraordinary and minister plenipotentiary of the United States to France; Hon. George F. Shepley, United States circuit judge; Hon. B. F. Butler, member of Congress; Hon. N. P. Banks, member of Congress, and Hon. Edward Causinard, late sheriff East Baton Rouge, La., distinguished names, surely, and had they testified in the case and to matters within their personal knowledge their testimony would be entitled to great credit. Naming these distinguished persons as witnesses and not calling them to testify is a circumstance not calculated to impress us profoundly. Judge Shepley is the only one who testifies. He was a military governor of New Orleans, and first made the acquaintance of the claimant soon after the Federal occupation
1002 of the city in May, 1862. He saw her, visited her, and associated with her occasionally from that time until she went to Baton Rouge, in the fall, and saw her once at Baton Rouge. From their acquaintance Governor Shepley believed her to be loyal. He is emphatic in the expression of this opinion, but his testimony, when analyzed, furnishes very little to justify the belief. When asked what knowledge he had of her having adhered to the Union cause he answers:

Her declarations to me and conversation, accompanied with acts; her declarations of Union sentiments and the open and avowed expression of them; and I know, for example, little incidents of her

having kept a Union flag hid all through the early part of the war, and her showing it to me.

How Governor Shepley could "know" this fact we are at a loss to perceive. That Mrs. Evans showed him the flag and told him she had kept it hid is unquestionably true; that it was done with a fixed purpose we think is equally true. That Mrs. Evans had a design in all her professions of loyalty made to Governor Shepley we do not doubt. The foregoing is given as all the direct knowledge the witness has, but he adds:

Then there is that outside, which is the recognition of the fact by her acquaintances at that time that those were her views.

1003 In this Governor Shepley must be mistaken. He is unable to name a single person whom he had heard speak of her in that way. When she left the city she applied to the witness for permission to go, and he gave it and at a time when he was not allowing many people to go and when, he says, I did not give it to many persons unless they were people of unquestioned loyalty, in my opinion, at the time. Of course I was deceived sometimes.

We think if Judge Shepley will peruse all the evidence in this case he will be fully satisfied that he was deceived in the case of Mrs. Evans.

Hon. Thomas J. Durant, Hon. A. J. Hamilton, Mrs. Myra Clark Gaines, Dr. Henry Perkins, claimant's uncle, and others are witnesses in her behalf, and none of them can say anything of her loyalty. Some of these persons ought to have heard of it. If not, surely some of that distinguished society who attended the musical festivals and "the last fete ever given" in New Orleans, where one-half the claimant's house was torn down in preparing for it, would have had some knowledge on that subject. Many of those persons must now be residents of New Orleans, and why were they not called as witnesses? The inference is irresistible. Mrs. Evans was not a Union woman, and the proof of that fact was not

1004 to be found among her Louisiana acquaintances. If a Union woman, loyal to the Federal cause, she could not have given large parties and musical festivals in New Orleans after the war commenced and before the occupation of the city by the Federal forces. No one would have attended them; no one would have dared to attend them. Not only were Union men imprisoned for their opinions, but, as Governor Shepley truly observes, "Social ostracism was absolute." Nemours Bienvenu, of New Orleans, a bookkeeper and witness, attended the claimant's musical entertainments in the winter of 1862, previous to the capture of the city by the Federals, and took part in the entertainments, himself a Confederate. If she had been known as an outspoken Union woman those entertainments would not have been attended. "She was supposed by the public to be in sympathy with the South. I would not have played at her house, sure, if I had believed she was a Union woman," this witness states. William S. Pike, banker, has known the claimant since she was a child. He says claimant's public reputation was that of "being eminently Southern in her feelings. * * * Mr. Linton was always regarded as being opposed to the Union."

C. W. Killborn was Federal provost marshal at Baton Rouge in 1862. He says the Perkins family were considered South-
1005 ern sympathizers at that time, and claimant was the same as the rest of them, so far as he knows.

Joseph R. Hackney, a storekeeper at Baton Rouge for twenty years, regards the Perkinses as Southern men. They talked and expressed themselves to him "as being in favor of the Confederates;" he never heard of claimant as a Union lady.

Joseph C. Charotte, of East Baton Rouge, was a member of city council and editor of the East Baton Rouge Gazette in 1861–'62. He says that after Louisiana seceded Dr. Jehu Perkins was regarded as in sympathy with the Confederates; knows he went to Camp Moore and traded in the rebel lines, back and forth, which only Confederates could do. In conversation Dr. Jehu Perkins always expressed to witness his sympathy with the Confederates, and witness never doubted that was the case, though some persons did, because Jehu traded with both sides. He knows claimant. "She was regarded as a high-toned Southern lady" during the war and in full sympathy with the Confederates. She attended entertainments gotten up for the benefit of Confederate soldiers and took an active part. She came frequently from New Orleans to Baton Rouge for that purpose.

This testimony has been submitted to the claimant, and she fails to avail herself of the opportunity to deny it.

1005½ James E. Dunham, a merchant of New Orleans, was private secretary to General Shepley in 1862 and subsequently sheriff of the parish of New Orleans. He knew Mr. Linton, and "judged he entirely affiliated with the Confederates. He expressed himself so." Dr. Perkins, the claimant's father, had the reputation of being a Southern man during the early part of the war and in favor of the Confederacy. "The whole family were regarded that way, and I reckon there was no doubt about it." He never heard claimant spoken of as a Union woman.

Such is some of the evidence that bears on the question of loyalty. We have endeavored to state all that favored the claimant. We have not forgotten the letters of General Butler, Hon. Reverdy Johnson, and Minister Washburne. The two former are frequently in the city of Washington, and if either had personal knowledge of anything favorable to the claimant he would have been called as a witness. Important evidence so easily obtained would have been produced. The letters are not evidence. To treat them as such in a claim of such magnitude would be trifling with the law and all rules of evidence. We think Mrs. Evans was not loyal to the Union cause, but, on the contrary, was in full sympathy with
1006 and gave material aid to the Confederacy. Considerations of a much graver character than loyalty are presented in this case. The claimant's personal testimony as to the taking of the property and the quantity taken is vague and indefinite. As a witness she makes no pretensions to definite knowledge on that subject. The principal witnesses to prove the taking of the property are the claimant's two uncles and three colored men, formerly slaves in the

family. The time for filing claims expired on the 3d of March, 1873. The amended claim was presented on the 10th of November following. In accordance with our uniform rulings it was not admissible, so far as the amounts claimed were increased, being to that extent substantially a new claim. As Congress has full control of the subject, we forward both the original petition and the amendment.

As amended it is the largest claim presented to the commission. The enormous increase in the amount as first stated is well calculated to create surprise if not suspicion. We have no explanation of it by the claimant, except that given in her amended petition. In November, 1873, no new sources of information were open to her or her kinsmen. Henry and Ackley Perkins both swear to
1007 positive knowledge of the large amount of property seized by the Federal troops. From whom but these uncles was the knowledge of the amount of property obtained? With whom did Mrs. Evans communicate? In 1869 she filed her claim before Congress. Two years passed by. In 1871 the claim was filed with this commission. Two years more passed by in preparing it for a hearing. If we are to believe Mrs. Evans' own statements she came from a foreign land back to her native country in poverty, houseless and homeless. In her own dramatic language, "My residence is under the canopy of heaven; I have none." For four weary years she was pressing the payment of a claim against her Government for an amount equal to a princely fortune. Yet in all that time neither of these uncles, who exhibit a deep interest in her behalf and who have shown themselves willing witnesses, communicated to the claimant facts vital to her claim and within their personal knowledge. It was information that could have been obtained by the asking. That it was not sought or given is incredible.

We give below the substance of the testimony on the part of the claimant relating to property, with further allusion to some of the increased items of the claim. Of the sugar, Henry Perkins
1008 says he had "a very good idea" of the number of hogsheads; made a memorandum of it, which was destroyed in the summer of 1863. In answer to the question, "And yet you can remember the precise number of hogsheads of sugar?" he says, "Yes, sir; I should think I ought to; it would be very singular if I could not. I might vary a hogshead or two, but I come as near as I can. When I say 825 hogsheads there might have been a few more or less." Ackley Perkins swears that after the soldiers had taken possession of the sugar-house he went in there and made a memorandum of the amount, which was 835 hogsheads; never told anybody he had counted them; often thought about it; never spoke to anybody about it at all until the Saturday previous to the date of his testimony. This item is changed from 500 to 825 hogsheads taken in 1862 and another item added of 294 hogsheads taken in 1863.

The increase in other items is no less remarkable. Eight hundred cords of wood is increased to 3,000; 40 mules to 62; 5,000 bushels of corn to 26,600; 100 tons of fodder to 374; 20 barrels of pork to 60; 500 pounds of bulk pork to 5,000; 20 barrels of beef to 62

tierces, and further additions of new items of 60 barrels of sirup, beds and bedding, 50 sheep, 100 hogs, 60 sets of harness,
1009 145,000 fence rails, &c.

To the taking of many of the items the testimony is no less positive than to the 825 hogsheads of sugar. Henry Perkins is positive as to numbers and quantities of much of the property taken in 1862, but not as to the sugar and molasses manufactured that year and taken the following winter, to wit, the 294 hogsheads of sugar, 60 barrels of sirup, and 290 barrels of molasses. He knows what was on the place when the Union army came, and estimates the quantity of corn in cribs and the fodder. The property was gone; he heard the Union troops took it, and General Williams told him they had use for all these things and said: "We will not take it without paying for it. We will pay for everything we get."

Duncan Williams, a former slave of Dr. Jehu Perkins, testifies to every item of the claim, estimating the quantity of corn and fodder. This witness was subjected to rigid cross-examination, which resulted in casting great doubt over many of his statements. This is the witness to whom Jehu Perkins, in 1862, gave a deed of 132 acres of land.

Newton Houston, a former slave of Dr. Henry Perkins, testifies that he went from Star Hill plantation to Richland about the
1010 1st of January, 1862, and was engaged there in refining sugar till the middle of March; returned to Star Hill, and, in the fall of 1862, went back to Richland and made the sugar from the cane of that year; made 300 hogsheads besides the molasses, and saw this sugar and some of the molasses hauled to Baton Rouge by the Federal soldiers.

John Harris, a former slave of Dr. Jehu Perkins, swears to the taking of mules, corn, hay, and fodder, harness, carts, and drays, tanks, horses, sheep, cattle, hogs, lumber, carpets, rails, and the sugar and molasses of the crop of 1862. When asked where they got the mules to make the crop of cane in 1862 this witness says that Dr. Jehu Perkins sent mules from the city. "He was in the city at the time and couldn't get out." They didn't have more than half enough to make the crop that year. This, of course, was after the first property (including the mules) was taken. It is not a very probable story that Dr. Perkins, after his plantation was stripped by the Federal troops, would the same year send mules from New Orleans to continue to work it, and it is difficult to understand how he could send mules from New Orleans when he could not get out himself.

1011 Andrew J. McCoy, a witness for claimant, was brigade commissary for General Williams's expedition to the Gulf, and after General Williams' death continued in the commissary department of the Gulf; was at Baton Rouge in August, 1862. His returns show that he took up for that month as confiscated "property taken possession of by General Williams" 632,546 pounds and 14 ounces of sugar; that sugar was seized and put in a warehouse on the bank of the river. The witness says this sugar was seized be-

tween the 20th of May and the 15th of June; cannot tell where it came from; some of it came from this Dr. Perkins' plantation; how much he cannot tell, "but we received sugar from it, I know, because the teams were hauling in what they called 'Dr. Perkins' sugar.'" When told the claim was for 825 hogsheads taken at that time he answers, "Well, I never saw so much sugar as that." Such is the substance of the testimony given to prove the taking of the property. That testimony has been printed in full by the claimant, to which we refer, and more copious extracts are, therefore, deemed unnecessary.

In this connection and immediately following the testi-
1012 mony of Commissary McCoy we quote from the deposition of William Roy, a witness on the part of the Government, at present a shipping commissioner and resident of New Orleans. Mr. Roy says:

I was in the Federal service during the war, and in May, June, July, and August, 1862, I was captain of Company A, Twenty-first Indiana Volunteer Infantry. I went to Baton Rouge with my command, under General Williams, in May, 1862. Some short time after going there I was sent to the plantation of Thompson Bird with my company, and while on the Bird plantation I seized a large quantity of sugar and molasses—a large amount. I was two or three weeks hauling it in. I remember that I took between seven hundred and nine hundred barrels of molasses, but don't remember the amount of sugar, although I know there was a large quantity of it—I think about five hundred hogsheads, but I am not positive; maybe more, maybe less. This sugar was seized by order of General Williams, transmitted to me through the commander of my regiment. A. J. McCoy was the post quartermaster at Baton Rouge at that time, and I think that Lieut. W. R. Hinkle was acting assistant. He was there in the building with him. The sugar was delivered at a warehouse on the levee. It was a warehouse that was used by the Federal troops. I don't recollect distinctly, but
1013 I think it was Hinkle who receipted for the sugar. The warehouse was used for storage and Bernard's wagon factory as a post-commissary, I think. Yes, sir; Lieutenant Hinkle acted as post-commissary during the absence of McCoy. I saw some of that sugar going on to a steamer. I rode into town one day and while there I saw negroes loading some of this sugar, which I recognized as being the sugar that I had shipped in, on board of a Government boat. The said Bird plantation is between a half and one mile from the Richland plantation—that is, from the dwellings. I was on the Richland plantation several times during the time that I was stationed on the Bird plantation, but I never saw any sugar or molasses on the said Richland plantation. No, sir; I never heard of any sugar or molasses being seized on the Richland plantation. Yes, sir; if there had been any quantity there I think I should have been apt to have seen it. I don't know of any other officer who seized any large amount of sugar or molasses at that time except myself. I was informed that Colonel Bird, the owner of the Bird plantation, was a major in the Confederate army. Yes, sir; Colonel Bird has brought suit against he

United States for the sugar that I seized on his place. I have given testimony in the case before United States
1014 Commissioner Craig, at New Orleans, a few months ago. No, sir; there was no sugar seized after the 5th of August, 1862, that I heard of. After leaving the Bird plantation, and while performing the duties of field officer of the day, I remember of visiting a picket on the Richland plantation. Yes; if eight hundred and twenty-five hogsheads of sugar and nine hundred barrels of molasses and twenty-six thousand bushels of corn, three hundred and seventy-four tons of corn-fodder and hay, three thousand cords of dry wood, and other things had been taken from the Richland plantation in the months of June and July, 1862, I certainly should have known of it; and I would state, further, that it would have been a moral impossibility for that quantity of property to have been taken without my seeing or hearing of it. I sent a non-commissioned officer to the Richland plantation, with a squad of men, to seize all the teams that he could get, and I think it was only three teams that he brought from the said Richland place, and I used them to haul from the Bird plantation, and returned the teams to the Richland plantation.

On the part of the Government, depositions, relating to property, of thirty other witnesses have been taken. The following is
1015 a synopsis of their testimony:

Frederick Bahncke, late first lieutenant First Louisiana (Federal) Infantry, while engaged in a fight with enemy at Hampton's Ferry, in the winter of 1862–'63, saw a quantity of sugar and molasses lying on the levee there, part of which the Federals rolled into the bayou and then retreated before the enemy; thinks the sugar and molasses was intended to be shipped by railroad further into the Confederate lines.

C. W. Kilborn, 48, New Orleans, Federal provost marshal at Baton Rouge in 1862, received all captured and abandoned property when first brought in and turned it over to commissary or quartermaster; is satisfied there was no such amount of sugar received as is claimed; was on the plantation twice and noticed some corn, sugar, and molasses there, but not anything like the amount charged; thinks there was 100 hogsheads of sugar, 150 barrels molasses, and 5,000 or 6,000 bushels corn in shuck; did not see any property taken from the place; would certainly have known it if such large quantities of provisions had been on the place; knows some property came from there, but no large amounts to his knowledge.

William Roy, 37, New Orleans, formerly captain in Union army, seized large amounts of sugar and molasses on the Bird plan-
1016 tation, ¾ mile from Richland, and visited Richland several times in 1862, but never saw any sugar or molasses there or heard of any being seized there; should have been apt to have known if there had been any there; is positive he would have known if the large amounts claimed had been taken from there. He sent an officer to seize all the teams on Richland place, and he found only three of them, which he used and afterwards returned to Richland; doesn't think General William- had wagons enough

to haul the sugar and molasses claimed during the time he was there, as they had only 50 or 75 wagons.

Christian Mehle, 39, New Orleans, cattle-dealer, testifies that his brother-in-law purchased a library from claimant which formerly belonged to S. D. Linton.

Jacob F. Sherfey; 35; Algiers, La.; ship carpenter; in Federal army during the war, and detailed under Lieutenant Hinkle, post commissary at Baton Rouge during Captain McCoy's absence, from June, 1862, to August. About 100 hogsheads sugar were stored in a warehouse there at Baton Rouge, which he issued to troops; didn't see any sugar marked "Richland;" was receiving and weighing clerk, and all seized sugar would pass through his hands necessarily. During the time named Lieutenant Hinkle received no sugar from any place; remember Captain Roy sending in
1017 sugar from Bird place before that time, while McCoy was commissary; never heard of sugar and molasses being seized on Richland, and thinks he would have known it if the large quantities claimed had been taken, as he was then camped near the road from Richland to Baton Rouge. There were not teams enough in General Williams's command to haul all that is claimed during the time they were there.

Juste Fontaine; 57; New Orleans; captain in Union army during war and stationed at and near Baton Rouge in June and July, 1862; was field officer and visited all pickets, including those on Richland. If the property claimed had been taken would have been sure to have seen or heard of it; saw 6 or 8 wagon-loads of corn hauled from there and fencing burned, but nothing more; returned to Baton Rouge in November, 1862, and I did not then hear of or see anything taken from Richland. The quantities claimed could not have been taken without his knowledge.

Randall Fields (colored); 34; Baton Rouge; former slave on Richland, and there when Yankees came in spring of 1862; thinks there were 25 hogsheads of sugar and 30 barrels of molasses and some in tanks when Yankees came. Sugar and molasses made the fall before had been hauled to Baton Rouge and shipped to
1018 New Orleans; remained on plantation during summer of 1862 and didn't see Yankees take anything away; helped make sugar that fall after Yankees left, and the sugar then made was hauled to Hampton's Ferry; can't say how much was hauled or left; doesn't believe there was a dozen hogs on Richland when Yankees came; colored people had killed them; never saw as many as 100 cattle on plantation.

Frederick Claiborne (colored), 31, Richland, former slave of John Perkins, knows that the plantation's teams were hauling sugar and molasses to Hampton's Ferry for a week or two just before Dr. P. moved his family to Mandeville; thinks they hauled 175 hogsheads sugar and left 100 hogsheads sugar on the place; heard that the Federal gunboats destroyed that which was taken to Hampton's Ferry, and subsequently saw remains of sugar there; was at Richland during the summer of 1862; never saw Yankees haul anything from there; saw soldiers taking small quantities in haversacks, &c.;

thinks 300 barrels molasses was left on place when Dr. P. moved to Mandeville; Dr. P. took ten teams of 4 mules each to Mandeville and afterwards sent them to Texas; Yankees got no mules there—only three horses.

Jacob Brown (colored), 45, Richland, former slave of Jehu
1019 Perkins, was living on Richland until the fall of 1862; helped make sugar fall before Yankees came; that sugar and molasses was hauled to Baton Rouge as fast as made, and sent to New Orleans; there wasn't much left when Yankess came; after Yankees left in 1862 made sugar and molasses and hauled it to Hampton's Ferry—say about 150 hogsheads sugar and 200 barrels molasses—and a little of it was sent to Baton Rouge, and 32 hogsheads sugar left on the place and 140 barrels molasses; Yankees didn't take any mules and wagons; they were used in hauling to Hampton's Ferry; he didn't see the Yankees take any sugar; saw a small quantity of corn taken by Federal troops—not many bushels; never saw any wood taken by them; there was but little cut on the place when they came. Dr. Perkins took all the best mules to move to Mandeville, and afterwards sent them to Texas; Yankees took 3 horses; there were not ten hogs on place when Yankees came; heard that Yankees destroyed the sugar and molasses at Hampton's Ferry.

Nat. Fields (colored); 39; Baton Rouge; former slave of Jehu Perkins on Richland; sugar-maker; sugar made fall before Yankees came was hauled away when made; when Yankees came there was but little sugar or molasses on the place; was on Richland
1020 all summer and didn't see Yankees take anything; sugar made the subsequent fall was hauled to Hampton's Ferry, as related by former witnesses.

Dennis Thornton (colored); 45; Richland; former slave of Jehu on Richland: "I and Duncan Williams run the engine at the sugar-mill;" same statement as to disposition of sugar made in 1861 and 1862 as former witnesses; thinks there were 10 or 12 hogsheads sugar and 10 or 15 barrels molasses when Yankees came in the spring of 1862; all the Yankees got were four or five loads of fodder; a company of Federals protected the place while Yankees were there; is sure Yankees got no sugar or molasses, as his house is in full view of the mill and sugar-house and within 200 yards of it; sugar-house was empty at that time; about 200 cords wood there, but Yankees didn't take it; it was used to make sugar after Yankees left; they took no mules or wagons; they were used to get cane and haul wood to make sugar after the Yankees left; Yankees took no corn; corn-houses were in full view from witness's house, and he never saw them hauling any and never missed any; there were three corn-houses; has measured and finds the two large ones are 30 by 20 and 10 feet high; the small one was about half that size; there was very little corn in the small house and a little
1021 in one of the large houses, and the other large house was full when the Yankees came, but they took none of it; no pickled pork on the place, but some pickled beef; never saw the hundred head of cattle or hogs. There were 25 milch cows. The sugar crop

of 1862 was small and the greater part hauled to Hampton's Ferry. There may have been 100 barrels molasses and 30 hogsheads sugar left; was not on Richland when Yankees came second time.

Richard Harris (colored); 65; occupation, "preaching the gospel of God;" a former slave of Mr. Linton; was on Richland when Yankees were there and says they didn't take anything in summer of 1862; sugar and molasses were hauled away, as related by Jacob Brown and others; repeats statements of former witnesses as to the small amounts of property on hand when Yankees came.

Sandford Lewis (colored); 76; Richland; former slave of Jehu; lived right in full view of corn-houses, mill, and warehouse, and was there all the time the Yankees were in possession, but never saw anything hauled away by them except four or five loads of crab grass. He corroborates previous witnesses in their statements.

Thomas Milton (colored), 45, former slave on Richland, says there were pickets stationed around Richland, who guarded and
1022 protected all the property on the plantation, and denies that the Yankees took any large amount of property from there, for the reasons already given by former witnesses.

Joseph R. Hackney; 55; Baton Rouge; a storekeeper; lived on the only road leading from Baton Rouge to Richland, and was living there in 1862, when Yankees were in possession; doesn't remember seeing Yankees hauling anything from Richland, and doesn't believe they could have taken quantities claimed without having his attention called to it, as he was at his store every day in full view of road; saw Ackley P. at that time on the plantation "more or less every day" for three weeks, and doesn't remember Ackley's mentioning the fact of the Yankees taking large quantities claimed; went in sugar-house at the time, and thinks there was but a small amount of sugar and molasses on hand. During winter and spring of 1863 Weathersby, the overseer, sold small amounts of sugar and molasses from plantation, and witness bought molasses from him.

De Witt C. Huyck; 35; Baton Rouge; engineer; wagon-master United States Army at Baton Rouge in 1862–'63; had charge of forty wagons, and was out on Richland, but never hauled
1023 anything from it, and has no knowledge of any one hauling any sugar or molasses from there; he "went through the plantation and went further on for forage; noticed no forage on that plantation at that time;" is positive nothing was hauled from there in his wagons.

Henderson Atkins (colored); 66; Richland; former slave of Jehu; repeats statements made by former witnesses, denying that there were large quantities of property on Richland; thinks when Yankees came there were about 10 or 12 milch cows, 3 yoke oxen, no beef cattle, no hogs; "we had done eat them up;" same story about the making and hauling away of the sugar to Hampton's Ferry. The sugar crop of 1862 was the smallest they ever made, and, with what was bought, made between 200 and 300 hogsheads. Witness baled 200 bales of hay, and it was sent to Mandeville by Jehu; no hay was left on the place.

Mat. Corbins (colored); 27; Baton Rouge; former slave on Rich-

land; repeats statements made by previous witnesses as to the making and taking away by Perkins of the sugar and molasses; never saw Yankees haul any. Ackley Perkins gave the Federal pickets small quantities of sugar and molasses, which they carried away in haversacks and camp kettles; Yankees took no beef cattle, but when they went away in August they left 9 or 10 head cattle
1024 there, which they had brought with them, and Perkins killed the cattle after Yankees went away; never saw any mules or other property in possession of Yankees in Baton Rouge or elsewhere afterward, although he was in the barracks at Baton Rouge from December, 1862, to 1865.

John O'Conner; 50; Baton Rouge; postmaster of Baton Rouge and resident there since 1854; lived on road leading from Richland to Baton Rouge, and saw Perkins' teams haul sugar and molasses to Baton Rouge in the fall and winter of 1861–'62, but never saw Federals hauling any there and never heard of their taking any from Richland. As a merchant he feels confident such large amounts of sugar and molasses could not have escaped his notice, as he dealt in sugar and molasses.

Allen Fields (colored), 65, Baton Rouge, formerly a slave on Richland, gives same version about the making of sugar and its shipment by Perkins; says the Yankee pickets protected the property that was left and nothing was taken from there. "They didn't interfere with the working of the plantation." Yankees left all the mules there, and they were used in the fall to help make sugar. No beef cattle or pickled pork there when the Yankees came; only twenty or thirty milch cows and yearlings.

1025 Jack Watson (colored), 29, Baton Rouge, former slave on Richland, repeats same story about making sugar and the disposition of it, and says Yankees didn't get much property.

Essex Corwin (colored), 75, Baton Rouge, former slave on Richland, heard Ackley Perkins say, at the time witness was carried to Port Hudson, that there was only from ten to fifteen hogsheads of sugar in the sugar-house, and tells the same story in all other respects that former witnesses relate.

Joseph C. Charotte; 57; planter; parish East Baton Rouge; in 1861–'62 was a member of city council and editor Baton Rouge Gazette; has known Richland since boyhood; in summer of 1862 lived 300 feet from main road leading from Baton Rouge to Richland and could plainly see all teams passing between those points; knew Perkins' teams well; never saw any sugar hauled on that road during June, July, or August, 1862. It would have been impossible to have hauled the quantities of sugar, molasses, corn, &c., without his knowing something about it; never heard that the Yankees seized any of those things on Richland. Dr. Perkins told witness in spring of 1862, when asked for corn, that he (Perkins) had very little—"scarcely enough to feed what little stock he had
1026 on hand." Dr. Perkins kept no beef cattle on the place; had some milch cows; never knew or heard of Yankees taking anything from Richland; was at Richland in 1862, about six weeks before Federals came, and was in the sugar-house. The mill

was stopped and nothing was running, and thinks there was no sugar there at that time; noticed empty hogsheads there, and there may have been a small quantity of molasses; had there been large quantities of sugar or molasses there would have seen it.

Lee Coleman (colored), 37, Richland, former slave of Linton, states the quantity of sugar on Richland in 1862, when Yankees first came, to be fifteen hogsheads, and molasses forty barrels; never heard of or saw Yankees haul anything from there then or subsequently; was on the place when they first came and afterwards in Baton Rouge.

Steven Burns (colored), 31, Richland, former slave of Jehu, says Yankees never took anything. He was there all the while; thinks there were two hogsheads white sugar and eight hogsheads brown sugar and eight or ten barrels molasses when Yankees first came, but Yankees never took it; repeats story of former witnesses about making and sending off sugar; saw Yankees burn old fence rails.

That is all; never any good ones. Witness and Duncan
1027 Williams helped a man named Kughler, living about three-quarters mile distant, to haul rails from Richland to repair Kugler's fence in spring of 1863. Nearly all the rails that were burnt were burnt by colored people after Dr. Perkins abandoned the place. Dr. Perkins sent all the mules and wagons to Texas; left but one mule, "named Black Jane. She was a crippled mule, and two old horses was left on the place; one was named Skewball and the other was an old roan horse, and had the pole evil." No beef cattle there, only fifteen milch cows, and "they strayed off, one at a time, because there was no one to look after them." The hogs had been "killed up" before Yankees came, as meat was scarce. Most of the sugar and molasses was used by the colored people. They "helped themselves. Everybody took what they wanted;" denies that "Sam. Patterson" hauled sugar for Yankees or had any Richland mules in his possession.

Enoch Elliott (colored), 52, Richland, former slave of Linton, repeats previous statements of witnesses as to small quantities of property, stock, &c., on place, and denies that Yankees got any large amounts as claimed. The colored people helped themselves to the sugar and molasses that was left by Perkins.

Abey Millroe (colored), 54, Richland, former slave of Henry
1028 Perkins on Star Hill, says that all the mule and ox teams from Richland were taken to Star Hill in December, 1862, or January, 1863, and used to haul cotton and sugar to Camp Moore and then sent to Texas.

Martha Slaughter (colored), 35, Richland, former slave of Jehu, lived on the plantation (Richland) until Yankees came there second time. The Yankees didn't take anything the first time, and second time there wasn't hardly anything for them to take—no mules, wagons, or horses, except a blind horse and an old black mule. Thinks there was about six or seven hogsheads of sugar and twelve barrels of molasses there when Yankees came. She saw nearly all the sugar and molasses hauled away to Hampton's Ferry before Yankees came, "with my own eyes." After Perkins moved away,

and colored men were sent to Port Hudson, the rest of the colored people helped themselves to sugar and molasses. Witness got a sackful of sugar herself. "Perkins went off and left us with nothing to eat," and they killed and ate the few sheep there were on the place. Mr. Barden, on the adjoining place, took charge of the cows that were left. Never saw sugar or molasses hauled by Yankees. The first time they came they never disturbed anything on the place—not a chicken. The second time they came they made a contraband camp of the place. Newton Houston never made
1029 sugar on Richland during the war. Yankees took no mules; there wasn't any when they came second time; no hogs, they had all been killed; there was four or five barrels pickled beef, but the women ate that up before Yankees came, "and after they came we went to Baton Rouge and stayed there, where we could get something to eat;" went into contraband camp and got rations from Yankees. Knows that Sam. Patterson didn't have any mules or haul from Richland.

William James, 67 (colored), former slave on Richland and on the plantation until fall of 1862, when he was sent to Port Hudson, was present when Yankees first came in 1862, and helped make sugar after Yankees left. Sugar was refined and hauled back to Baton Rouge as fast as refined. When Yankees came there was some sugar left for plantation use. Yankees did not haul any sugar away, nor corn, wood, or hay during first summer. Yankees camped on place; burned some wood while on picket. Yankees did not take any mules; they were used to haul cane after Yankees left. Knows that some of the sugar made in fall was hauled to Hampton's Ferry; also molasses; does not know what became of rest or how much was left, as he was taken to Port Hudson by rebels while it was being hauled. No beef cattle on place, only some milch cows and oxen; Yankees did not take any.

1030 William S. Pike, 54, New Orleans, banker. Dr. Perkins possessed large property, but was always largely indebted and believed generally to be worth little or nothing; cannot see how it is possible he had the amount of property claimed.

Joseph R. Hackney; 55; Baton Rouge; a storekeeper; was called upon to appraise Richland in 1860 or early in 1861 by Deputy Sheriff Hernandez, who had the place under seizure. The property was appraised at something over $100,000, which included land, stock, and slaves. The general report was that Dr. Perkins was in an embar-assed condition and the plantation had been sold by sheriff previous to Yankees occupying Baton Rouge.

Henry V. Babin; 60; Baton Rouge; was sheriff of parish of East Baton Rouge in 1861 and 1862. In 1861 witness sold Richland at sheriff's sale. The certificate of mortgage amounted to more than $200,000 and was against Jehu and Henry Perkins and was sold as the property of Jehu and Henry Perkins for $100,000 and adjudicated to Ackley Perkins, who furnished a twelve months' bond, with W. S. Pike and J. M. Williams as sureties, for $20,000 or $25,000; balance of adjudication retained in said purchaser's hands to pay and satisfy privileged mortgages. To the best of his belief the

bond or no part of it was paid by Ackley Perkins; under-
1031 stood that the plantation was sold in 1866 to satisfy bond and interest. Pike was the only solvent bondsman and Pike's property was seized for payment and Pike became the purchaser of the plantation; does not know of Ackley Perkins ever paying anything on the place. Sale included land, slaves, and personal property, he thinks. Henry and Jehu were regarded in Baton Rouge as "hopelessly insolvent" at the date of sale; does not thinks Perkins could have owned as much property as he claims.

John O. Conner; 50; Baton Rouge; postmaster of Baton Rouge; has lived in Baton Rouge since 1854; knew Jehu in 1861. He was very much embar-assed financially; was sold out by sheriff. "From my knowledge of his financial embar-assment I do not believe it possible he would have carried over the enormous amount charged" in his claim.

Joseph C. Charotte; 57; planter; parish East Baton Rouge; member of city council and editor Baton Rouge Gazette in 1861–'62; knew Perkins personally; from his knowledge of Dr. Perkins's embar--assed condition, is satisfied he could not have carried the amount of property claimed or had it on hand. In the examination of this claim our agent took the depositions of four witnesses (Dr. James M. Williams, Hiram Mansur, Samuel Patterson, and Robert R. Barrow), introduced and examined by Henry Perkins in the interest of the claimant. Our general instruction to agents is to ascertain

every fact and all the information possible to be obtained to
1032 elicit the truth. It not infrequently happens that information thus obtained in strict conformity with the law is favorable to a claim, and it is not easy always to distinguish between testimony taken by our agent on behalf of the claimant and that taken on the part of the Government which is favorable to the claimant. Waiving the question how far the evidence of these four witnesses is admissible under the act requiring the testimony on behalf of the claimant in claims exceeding $10,000 to be taken before the commissioners personally or some one of them, their depositions contain nothing that could change our decision on either branch of the case. Neither of these four witnesses alludes to the loyalty of Mrs. Evans. We have examined their depositions, which are with the papers accompanying this report. It will be seen that the investigation has been thorough if not exhaustive. The synopsis of the testimony herein given leads to but one conclusion. The claim in all its leading features is dishonest and fraudulent. It is only by reading all the evidence in detail that we become fully impressed with its enormity. In view of the surrounding circumstances, the situation of the parties interested at the time, and their subsequent conduct, the idea that the large amount of property was taken from the Richland plantation as claimed is repugnant to common sense.

In May, June, July, and August, 1862, Dr. Perkins and his
1033 daughter were in New Orleans. The former was, as Mrs. Evans tells us, "the intimate acquaintance of Generals Butler, Shepley, and Banks; he was with those gentlemen every day." It is certain General Shepley, then military governor of New Orleans,

regarded them as loyal to the Union. He gave them permission to leave the city. They were receiving favors from the Federal authorities. The provost marshal at Baton Rouge, as a favor to Dr. Perkins and family and at the request of Mr. Pike, took from Pike's bank a large box of family silver and at some personal inconvenience delivered it to Dr. Perkins in New Orleans. Had General Shepley been applied to personal favors and protection to the extent of his ability would have been extended to these persons. We are now asked to believe the incredible story that army stores and supplies were, during this period, from day to day taken from this family at Baton Rouge, in close and open communication with New Orleans, by officers of the Union army in the regular way, to hundreds of thousands of dollars in amount, and no official record of the taking made, no complaint by Dr. Perkins or his daughter, no payment made, no vouchers asked for or given, and nothing heard of the claim by the officers of the Government or any other person outside of the family until 1869, and the full amount of the property taken not even then known to the claimant herself nor until four years thereafter. Superadded to all this is the significant fact that
1034 Dr. Perkins was pecuniarily embarrassed and his property sold on execution in 1861.

The conclusions toward which we are inevitably drawn by the conduct of the parties named and the surrounding circumstances last alluded to are fully sustained by the evidence, which, though conflicting, is overwhelmingly against the claim. Witness after witness was called on the part of the Government, all of whom had personal knowledge of the matters to which they testified, some of them colored persons and former slaves in the Perkins family; others prominent citizens of Baton Rouge and vicinity and personal acquaintances of the family, and others former Federal officers. Their combined testimony is irresistible. It shows that the claim has no existence in fact. The 825 hogsheads of sugar, with the golden sirup and molasses, dwindle to the remnants of the stock of a large sugar refinery after a season's business had been concluded and the product disposed of. The greater portion of the 294 hogsheads, the crop of 1862, is sent to Hampton's Ferry by Dr. Perkins and there destroyed by the Federals; 26,600 bushels of corn shrink to a quantity so small that Dr. Perkins could spare none to a neighbor. The mules go off to Mandeville, and from thence toward Texas, with the family, as they retire before the advancing Federal army.
The cattle, hogs, and sheep are few in number, and that few
1035 are used by the colored people on the plantation. A large portion of the 20 miles of rail fence is transformed into a hedge, a larger portion of the remainder transferred to a neighboring plantation, and the claim in all its vast proportions vanishes into a creation of the brain.

We think the value of all the property taken from this plantation for army use is less than one thousand dollars.

Strong words are used in this report; the facts justify such use. Less expressive language fails properly to characterize the claim. If it were to end with this report we might be content simply with

recording its disallowance, but it will live long after this commission has expired. It belongs to a class that never die, that are never known to diminish in amount, but grow, year by year, from dollars to hundreds and to hundreds of thousands, and the proof to sustain which, contrary to the ordinary course of events, multiplies and strengthens with the lapse of time and keeps pace with the increase of the demand--a class of claims to secure the payment of which strong political influences are invoked and the services of able advocates secured, whose zeal is quickened by the glit-
1036 tering prospect of large contingent fees and whose pecuniary interest is too often increased by money advanced to needy claimants.

That the Government is in part responsible for the existence of this class of claims is undeniable. They will continue to threaten the public treasury until the time for their presentation is limited by constitutional law and some proper tribunal provided for the speedy adjustment and payment of all honest demands and the Government relinquishes its sovereign power of exemption from prosecution and champerty and maintenance are made crimes by statutory enactment.

U. S. Circuit Court, Eastern District of Louisiana.

MARIE P. EVANS *et als.*
vs.
DAVID URQUHART *et als.* } No. 7672.

Offered in evidence by the State National Bank June 17th, 1884.

(Signed) F. A. WOOLFLEY,
Special Examiner.

1037 STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

DAVID URQUHART
vs.
STEVEN DUNCAN LINTON } No. 14665. Fourth Dist. Court.

U. S. Circuit Court, Eastern District of Louisiana.

MARIE P. EVANS *et als.*
vs.
DAVID URQUHART *et als.* } No. 7672.

Offered in evidence in behalf of the State National Bank June 10th, 1884.

(Signed) F. A. WOOLFLEY,
Special Examiner.

1038 STATE OF LOUISIANA,
City of New Orleans.

Civil District Court in and for the Parish of Orleans.

DAVID URQUHART
vs.
STEVEN DUNCAN LINTON. } Fourth D. Court. No. 14665.

Petition for Executory Process. Filed March 15th, 1861.

To the honorable the judge of the fourth district court in and for the city of New Orleans:

The petition of David Urquhart, a citizen of the city of New Orleans, respectfully sheweth that Steven Duncan Linton, formerly a resident of the parish of East Baton Rouge, but now domiciliated in the city of New Orleans, justly owes him thirty-two thousand five hundred dollars, with eight per cent. per annum interest on one-third of said sum from the 13th of January, A. D. 1861, until
1039 paid, and like interest on one other third from the 13th of February, A. D. 1861, until paid, and like interest on the remaining third of said sum from the 13th of March, 1861, until paid, besides ten $\frac{50}{100}$ dollars, costs of protest, and the costs of these proceedings, in which are to be included five per cent. upon the amount herein sued for, being attorney's fees or commission for instituting these proceedings. Petition represents that the said indebtedness is evidenced by three promissory notes, each one for ten thousand eight hundred and thirty-three dollars, drawn by the said Steven Duncan Linton to his own order and endorsed in blank by himself, which, with the protests, are herewith filed for reference, the same being a portion of twelve promissory notes executed on the 27th day of December, in the year 1859, by the said Steven Duncan Linton to and in favor of W. & D. Urquhart, each one being for a like sum and forming an aggregate of one hundred and thirty thousand dollars. Petition represents that when said Linton executed the said notes he at the same time, to wit, on the day of the date thereof, did, by
1040 public act passed before Theodore Guyol, a notary public, executed also a special mortgage to secure the payment of same, principal, interest, and costs, upon a certain cotton plantation, known by the name of the "Quantico plantation," situated in the parish of Rapides and State of Louisiana, and also upon one hundred and ninety-five slaves attached to the said plantation, with their increase, and also upon all of the personal property attached to said plantation.

And petition represents that the said Linton did therein bind and obligate himself, in case it should become necessary to institute legal proceedings for the recovery of the amount of the said notes or any part thereof, to pay the fees of the attorney-at-law who should be employed for the purpose, and which fees were then fixed at five per cent. upon the amount sued for, and he further represents that the payment of the said fees are secured by the mortgage aforesaid.

And petition further represents that the said mortgage
1041 was executed not alone in favor of the commercial firm of W. & D. Urquhart, the original mortgagees, but the said Linton did in said instrument expressly agree that the benefits of the said mortgage should enure to the benefit & use of and all future holder or holders of the said promissory notes; and petition further represents that the said Linton did therein also agree and stipulate that all proceedings upon the said mortgage for the recovery of the amount of the said notes or any of them might be instituted and had before any of the district courts of New Orleans, and all of which can be more fully seen by reference to said act of mortgage, a copy of which is herewith filed for referance and annexed hereto. The premises considered, petitioner prays your honor to grant him an order of seizure and sale, to be addressed to the sheriff of the parish of Rapides, directing him to sell according to law the property set forth in the act of mortgage aforesaid upon the terms following: For so much cash as will pay and satisfy the three notes held by the petitioner and filed hereunto, amounting to thirty-two thousand five hundred dollars, besides interest, costs of protest, costs of suit,
1042 & five per cent. commission as attorney's fees, and upon such terms of credit as will correspond with the maturities of the remaining notes set forth in the act of mortgage aforesaid; and petitioner prays for general relief in the premises.

(Signed) J. N. ELGEE,
Att'y-at-Law, for Petitioner.

Order.

Let an order of seizure and sale issue as prayed for, and let the mortgaged property set forth in the act of mortgage on file in the cause, to wit, the act executed 27th December, 1859, by Steven Duncan Linton to and in favor of W. & D. Urquhart, be sold according to law for so much cash as will pay and satisfy the seizing creditors' demand, principle, interest, and all costs, including five per cent. commission on the amount sued for as attorney's fees, and upon such terms of credit as will correspond with the falling due of the remaining nine notes set forth and described in the act of mortgage aforesaid, & let the def't have due notice thereof.

Done & signed at chambers on this 15th day of March, A. D. 1861.

(Signed) JOHN W. PRICE, *Judge.*

Document, Being a Letter. Filed March 15th, 1861.

Mr. De Choiseul will please obtain the necessary order from
1043 the judge and then file with the clerk the papers. He will be so good as to direct two copies of the petition and order thereon to be made out, after which the sheriff will serve one upon Mr. Linton and made his return upon the other, but the one having the return upon it is to be given to me, so that I can exhibit it

to the sheriff of Rapides as evidence that due and legal notice *have* been given prior to the issuance of the writ.

Ask the sheriff to make the service as soon as possible.

New Orleans, 15th March, 1861.

(Signed) J. N. ELGEE.

Document. Filed October 31st, 1865.

DAVID URQUHART *vs.* S. T. LINTON. } Fourth District Court. No. 14665.

In this case an order of seizure and sale issued 18th March, 1861, addressed to the sheriff of the parish of Rapides, and which was duly executed by seizure of the property thereon described, all of which will appear by the writ of seizure and return thereon made by the sheriff of Rapides on the 21st of March, 1861, & after due notice was advertised on 3rd April, 1861, to be sold on the 4th of May, 1861.

After the seizure and the day of sale all further proceedings were stayed, but the sheriff *as* in duty bound to keep & duly kept possession of the property up to the present day, and it is now ad-
1044 vertised for sale. The cotton was gathered during the possession of the sheriff, and as such, under the law of Louisiana, formed a part of the effects seized, & *are* held under the seizure & forms as much a part of the security of the same creditor as the land itself. These facts & the actual possession of the cotton are patent by the writ of seizure itself, now submitted, & the authorisation of Sheriff Wm. J. Neal to Mayor (now Governor) Wells to take charge for him of all the cotton, corn, & personal effects on the Linton plantation, and he has authority, further, to keep all intruders off the land.

August 21st, 1863.

(Signed) W. J. NEAL, *Sheriff.*

Art. 457, Civil Code:

The fruits of an immoveable, gathered or produced since it was under seizure, are considered as making part thereof and inure to the benefit of the person making the seizure.

See also 9 Robinson, 256, & 1st Hamen's Digest, page 647, for many decisions in points.

This cotton was grown and produced while the plantation was under seizure by the sheriff of Rapides, at the suit of David Urquhart, and Governor Wells was the custodian of the property, which is now and has been since March, 1861, under seizure, the sale having been stayed by the general stay law in 1861.

The seizing creditors hold the cotton legally against the world, & neither the debtor -or any assignee or person claiming through him can set up any legal claims to the cotton.

1045 Governor Wells has an interest in the debt, although not a seizing creditor by name, as well as being the custodian for the sheriff for the benefit of Mr. Urquhart, the seizing creditor.

(Signed) J. MADISON WELLS.
" DAVID URQUHART.

The writ of seizure & seizure & return of sheriff of Rapides, marked A; sheriff's order to Gov. Wells to take charge of & keep the cotton, marked B. When the authorities choose to name a day full testimony, if considered necessary beyond the sheriff's return, can be submitted.

(Signed) J. M. W.
" D. U.

Order of Seizure.

D. URQUHART
vs.
STEVEN D. LINTON. } Fourth D. Court. No. 14665.

To the sheriff of the parish of Orleans:

You are hereby commanded, in the name of the State of Louisiana and the fourth district court of New Orleans, to seize and take into your possession the sixty-five bales cotton described in the accompanying motion, and hold the same in your custody until the further orders of this court, and what you do in the premises you make return thereof to our said court according to law.

Witness the Honorable Paul E. Theard, judge of our said court, at the city of New Orleans, this 31st day of October, in the 1046 year of our Lord eighteen hundred & sixty-five, and in the 90th year of the Independence of the United States.

(Signed) E. O. SULLIVAN, *D'y Cl'k.*

Sheriff's Return.

Received October 31st, 1865, and on the same day seized and took into my possession fifty-three bales of cotton marked O. N. C., and subsequently, on the 9th November, 1865, release- said seizure, as per order of plaintiff's attorneys.

Returned Nov. 9th, 1865.

(Signed) S. P. FORGE, *D'y Sh'ff.*

In pencil written on the back:

On the 31st day of October, 1865, seized 53 bales of cotton marked O. N. C. at the Frerets press & took a rece-pt for the same.

(Signed) G. TOURNADE, *D'y Sh'ff.*

Received, New Orleans, Nov. 2nd, 1865, from Chas. Bienvenu, sheriff of parish of *New* Orleans, the sum of eighteen $\frac{55}{100}$ dollars for drayage on 53 bales cotton marked O. N. C.

Received payment.

(Signed) P. QUINN,
Per BAKER.

In pencil written on the back:

Removed to sheriff's warehouse, Jefferson street, Nov. 1st, 1865; receipt return-.

(Signed) WOLUM.

1047 *Letter. Filed October 31st, 1865.*

D. URQUHART *vs.* S. D. LINTON. } 4th District Court. No. 14665.

Copy.

Office supervising special agent Treasury Department, 3rd agency.

NEW ORLEANS, 31*st October*, 1865.

J. W. Burbridge, Esq.

SIR: You will please deliver to Dr. Henry Perkins or order the 316 sacks of cotton in the seed sent to you from this office on or about the 9th October, 1865, or if the same has been ginned & baled deliver the bales produced from the same on his paying all the charges due this office & such other charges as you may have on the same.

(Signed) O. H. BURBRIDGE,
By W. J. LANDRUM, *Clerk.*

Order of Seizure. Filed October 31st, 1865.

URQUHART *vs.* LINTON. } Fourth District Court. No. 14665.

The plaintiff in this case moves the court to issue an order of seizure, directed to the sheriff of Orleans, in this case to seize (65) sixty-five bales of cotton now within the jurisdiction of this
1048 court, having been furtively and forcibly, fraudulently, and illegally taken from the custody of the sheriff of the parish of Rapides by the advice, procurement, and at the instance of Henry Perkins, who now, by himself or his agents, has wrongful and illegal possession thereof, &, unless immediately taken possession of by the sheriff of the parish of Orleans, will be carried out of the parish or disposed of contrary to the rights of the plaintiff & in contempt of the authority of this court. Plaintiff avers that said cotton was grown & gathered after the writ of seizure was duly executed and the property advertised for sale, & inured to the benefit of the seizing creditor, and that while so in the sheriff's custody & keeping to await the sale of the other property & the cotton it was, as above asserted, taken from the custody of the sheriff and brought here, into the parish of Orleans, by the cotton bureau through the agency of said Perkins, and now has been delivered over to said Perkins as not being property either captured or abandoned; that said cotton

was brought down in seed in 316 bags, which produced after ginning 65 bales, and which untill the said order of the cotton bureau was in their custody and on the hands of their agent, J. W. Burbridge, of New Orleans.

The plaintiffs reserves herein the right to pursue the said H. Perkins and all others for this unjust invasion of his rights. He appends hereto the return of the sheriff of Rapides to the
1049 original writ of seizure issued by your honorable court on the 18th of March, 1861, showing seizure & advertisement, &c., and also the order of the sheriff of Rapides putting the cotton in the custody of J. M. Wells as his special agent to guard & protect the same and all the other property till the sale thereof & further legal proceedings in the premises. The plaintiff reserves the right to ask for other & additional proceedings and remedies in this case.

(Signed) HYAMS & JONAS,
For Plaintiff.

Before me, the undersigned authority, personally appeared David Urquhart and James M. Wells, who, after being duly sworn, made oath that all the allegations above set forth are true.

(Signed) DAVID URQUHART.
" J. MADISON WELLS.

Sworn to & subscribed before me this 31st October, 1865.
(Signed) J. F. DICK, *D'y Cl'k.*

Order.

Let a writ of seizure issue in this case, as herein prayed for, and let the property herein described be seized, in whatever hands it may be found.

New Orleans, Oct. 31st, 1865.
(Signed) PAUL E. THEARD.

Received Nov. 18th, 1865, papers, marked A, B, & C, filed herewith October 31st, 1865.
(Signed) HYAMS & JONAS, *Attorneys.*

1050 *Application to Bond.* *Filed November 3rd*, 1865.

DAVID URQUHART
vs.
STEPHEN D. LINTON. } Fourth D. Court. No. 14665.

Now come Wm. Prehn & Co., a commercial firm doing business in New Orleans, & respectfully ask your honor for permission to bond fifty-three bales of cotton held & possessed by them as owners, & which the sheriff has forcibly taken into custody without notice to them or any legal & just proceedings herein. Said Wm. Prehn & Co. aver that they are willing to give any bond required of them to abide any claim made upon said cotton, and aver that their property is now sought to be taken from them without any bond given by

plaintiff or any such proceedings as are required by law; wherefore they ask that possession of their cotton may be restored to them upon their executing a bond for the value of the same according to law.

(Signed) THOS. L. BAYNE.
E. W. HUNTINGTON, *Att'y.*

Order.

It is ordered by the court that notice of this application be given to the plaintiffs, and that the same be fixed for Wednesday, the 8th inst., at 11 o'clock.

1051 *Affidavit Annexed to Application to Bond. Filed November 4th,* 1865.

DAVID URQUHART *vs.* STEPHEN D. LINTON. } 4th District Court. No. —.

R. M. O'Brien, being duly sworn, says that the fifty-three bales of cotton seized at Freret's press by the sheriff of the parish of Orleans on the 1st Nov., 1865, were subject at the time of the seizure to the order of Messrs. Wm. Prehn & Co., of this city.

(Sig.) R. M. O'BRIEN.

Sworn and subscribed before me this 3rd day of October, 1865.

(Signed) SAMUEL MYERS,
Second Justice of the Peace, Parish of Orleans.

Affidavit Annexed to Application to Bond. Filed November 4th, 1865.

DAVID URQUHART *vs.* STEPHEN D. LINTON. } 4 District Court. No. —.

C. Thal, being duly sworn, says that the fifty-three bales of cotton marked small P and small B, seized by the sheriff of the parish of Orleans in the Freret cotton press on the 1st November, 1865, were purchased by Wm. Prehn & Co. prior to said seizure; that at the time of said seizure the said cotton was held by said press on storage for the said Wm. Prehn & Co.

(Signed) SAMUEL MYERS,
1052 *2nd Justice of the Peace, Parish of Orleans.*

Writ of Seizure and Sale.

No filing. No. —.

DAVID URQUHART
vs.
STEVEN DUNCAN LINTON. } Fourth District Court. No. 14665.

To the sheriff of the parish of Rapides, Greeting:

You are hereby commanded in the name of the State of Louisiana and of the fourth district of New Orleans to seize and sell, according to law, the following-described property, to wit, a certain plantation known by the name of the "Quantico plantation," situated in the parish of Rapides, in this State, on the east side of Bayou Boeuff, and containing about eighteen hundred acres, the said plantation lying at the mouth of Bayou Robert, about twelve miles from the town of Alexandria, and being bounded on the upper side by the lands of Chandeers and on the lower side by L'Esperanza plantation of the late John Linton, deceased, together with the buildings and improvements thereon, the engines, machinery, & apparatus, stock, cattle, horses, mules, farming utensils and implements of husbandry on the said plantation, to pay and satisfy in cash the plaintiff's claim, amounting to thirty-two thousand five hun-
1053 dred dollars, with 8% *per cent.* interest per annum on one-third of said sum from the 13th of January, A. D. 1861, like interest on the other third from the 13th of February, 1861, and like interest on the remaining third from the 13th March, 1861, until paid; also ten $\frac{50}{100}$ dollars' costs of protest, five per cent. on the amount claimed as sued for as attorneys' fees & the costs of these proceedings, and also to pay nine other notes, amounting to ten thousand eight hundred and thirty-three dollars thirty-three and one-third cents each, and which are held by different parties, and more particularly set forth and described in a certain act of mortgage passed before T. Guyol, not. pub., on the 27th Dec'r, 1859, the plaintiff being the holder and owner of three certain prommissory notes, each one for ten thousand eight hundred and thirty-three $33\frac{1}{3}$-100 dollars, drawn by the said Steven Duncan Linton to his own order and endorsed in blank by himself, the same being a portion of twelve promissory notes executed on the 27th day of December, 1859, by the said Stephen Duncan Linton to and in favor of W. & D. Urquhart, the remaining nine of the said twelve promissory notes being described above, all of which said notes form an aggregate amount of one hundred and thirty thousand dollars and bearing special
1054 mortgage on the property above described, all of which is more fully set forth and described in the said act of mortgage, copy of which accompanies this writ for reference.

And what you do in the premises you *you* make return thereof, together with this writ, to our said court, as the law directs.

Witness the Honorable Paul E. Theard, judge of our said court,

[SEAL.] at the city of New Orleans, this sixth day of October, in the year of our Lord eighteen hundred and sixty-five, and in the 90th year of the Independence of the United States.

(Signed) J. F. DICK, *D'y Cl'k.*

Sheriff's Return.

Received on the 12th October, 1865, and, after the legal and necessary notices and delays, seized and advertised the within-described property for sale in the Louisiana Democrat, when on the 21st November, 1865, this writ was ordered to be returned by plaintiff's attorney, Thos. C. Manning, and is accordingly returned.

New Orleans, Nov. 21st, 1865.

(Signed) C. V. LEDOUX, *D'y Sh'ff.*

Order.

ALEXANDRIA, *Nov.* 21*st*, 1865.

The plaintiff directs the discontinuance of proceedings under this execution, withdrawal of advertisement, & —.

(Signed) MANNING,
Att'y for Urquhart.

1055 *Application to Bond.*

DAVID URQUHART *vs.* STEVEN D. LINTON. } Fourth Dist. Court. No. 14665.

Now came William Prehn & Co., a commercial firm doing business in New Orleans, — respectfully ask your honor for permission to bond fifty-three bales of cotton held and possessed by them as owners, & which the sheriff has forcibly taken into custody without notice to them or any legal & just proceedings herein.

Said Wm. Prehn & Co. aver that they are willing to give any bond required of them to abide any claim made upon said cotton, but aver that their property is now sought to be taken from them without any bond given by plaintiff or any such proceedings as are required by law.

Wherefore they ask that possession of their cotton may be restored to them upon their executing a bond for the value of the same according to law.

(Signed) THOS. D. BAYNE.
E. W. HUNTINGTON, *Att'ys.*

Order. Filed Nov. 3*rd*, 1865.

It is ordered by the court that notice of this application be given to the plaintiffs, and that the same be fixed for Wednesday, the 8th inst., at 11 o'clock.

Clerk's office, fourth district court of New Orleans, Nov. 3rd, 1863.

A true copy.

(Signed) H. V. KENNEDY, *D'y Cl'k.*

1056 *Sheriff's Return.*

Rec'd November 4th, 1865, and on the 6th day of the same month and year I served a copy of this rule on J. M. Wells personally; same day I served a similar notice on D. Urquhart personally.

(Signed) ROBERT SWAIN, *D'y Sh'ff.*

Document No. 14665.

3 notes & protest to be delivered to the order of J. M. Wells. Received the 3 notes and protest in this case.

(Signed) D. URQUHART,
By HYAM & JONAS, *Att'ys.*

Feb'y 16th, '66.

NEW ORLEANS, 19*th March*, '66.

First National Bank of New Orleans pay to the order of Hyams & Jonas, att'ys, six thousand seven hundred and twelve $\frac{50}{100}$ dollars. $6,712.50.

(Signed) W. COOPER, *Ag't.*

[On margin:] Endorsed by Hyams & Jonas, att'ys.

[On margin:] U. S. provisional court, State of Louisiana, prosecuting attorney's office.

Motion to Dismiss. Filed 20*th October*, 1866.

DAVID URQUHART
vs.
STEPHEN DUNCAN LINTON. } Fourth D. Court. No. 14665.

On the motion of Hyams & Jonas, of counsel for plaintiff, it is ordered that this suit be discontinued and the writ of seizure herein obtained be dismissed.

1057 *Motion to Withdraw Record. Filed June* 16*th*, 1874.

DAVID URQUHART
vs.
S. DUNCAN LINTON. } Fourth District Court. No. 14665.

On the motion of R. Steuart Dennee, and on suggestion to the court that he is desirous of withdrawing the record in this cause—

Therefore it is ordered that the same be withdrawn on receipting to the clerk for the same.

Motion to Withdraw Papers. Filed June 29th, 1875.

DAVID URQUHART
vs.
S. D. LINTON. } Fourth D. Court. No. 14665.

On motion of C. M. Emerson, of counsel for the widow of the late S. D. Linton—

It is ordered that he have leave to withdraw the papers temporarily in order to examine the same.

1058 STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

I, W. J. McGeehan, clerk of the civil district court for the parish of Orleans, do hereby certify that the above and foregoing twenty pages do contain a true, correct and complete transcript of record of all the proceedings had, documents filed, and evidence adduced in the cause entitled D. Urquhart *versus* S. D. Linton, instituted in the late fourth district court for the parish of Orleans under the No. 14665, and duly transfer-ed to the aforesaid civil district court for the parish of Orleans by operation of law under the No. 11573 of the docket thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, on this 9th day of June, A. D. 1884.

[SEAL.] (Signed) W. J. McGEEHAN,
Clerk Civil Dist. Court.

1059 STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

AARON COHEN
vs.
S. D. LINTON. } Fourth Dist. Court. No. 14708.

U. S. Circuit Court, Eastern District of Louisiana.

MARIE P. EVANS *et al.*
vs.
DAVID URQUHART *et al.* } No. 7672.

Offered in evidence in behalf of the State National Bank, June 10th, 1884.

(Signed) F. A. WOOLFLEY,
Special Examiner.

1060 STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

AARON COHEN } No. 14708.
vs. } Fourth Dist. Court.
S. D. LINTON.

Petition for Order of Seizure and Sale. Filed March 22nd, 1861.

To the honorable the judge of the fourth dist. court in and for the city of New Orleans, State of Louisiana:

The petition of Aaron Cohen, of the city of New Orleans, respectfully represents that Stephen Duncan Linton, also of the same residence, but formally a resident of the parish of East Baton Rouge, is justly indebted to him in the sum of ten thousand eight hundred and thirty-three 33⅓-100 dollars, with interest thereon at the rate of eight per centum per annum from the 18th of March, A. D. 1861, until paid, besides three $\frac{50}{100}$ dollars, costs of protest, as will
1061 appear by the promissory note of the said Stephen Duncan Linton herewith filed, together with the protest of same.

Petitioner further represents that the said note, principle and interest, is secured by a mortgage on certain lands, slaves, and moveables appertaining thereto and situated in the parish of Rapides, the said property being known as the "Quantico plantation," the property of S. D. Linton aforesaid. A certified copy of the said mortgage is filed herewith, by which it will be seen that on the 27th day of December, A. D. 1859, the said Stephen Duncan Linton did, by public act passed before Theo. Guyol, a notary public, resident in New Orleans, executed a mortgage upon the said "Quantico plantation" and slaves to secure the full, final, and punctual payment of the sum of one hundred and thirty thousand dollars, evidenced by twelve promissory notes, each one for the sum of ten thousand eight hundred and thirty-three 33⅓-100 dollars, due respectively on the tenth day of January, the tenth day of February, the tenth day of March, and the fifteenth day of March, in the years eighteen hundred & sixty-one, two, and three.

And your petitioner further represents that the said mortgage was executed not only to secure the payment of the prin-
1062 ciple & interest of the said notes, but it also was given to secure the payment of five per cent. as attorney's fees in the event it should be found necessary to institute legal proceedings for the recovery of any one of the said notes.

Petitioner represents that the said notes were executed by the said Linton to his own order and by him endorsed in blank, and the note filed herewith is one of the said notes.

Petitioner represents further that in the said act of mortgage it is stipulated that the same shall enure to the benefit of any holder of the said notes or of any one of them, and that legal proceedings thereon may be instituted for the recovery or enforcement of the same by proceedings before any of the courts in New Orleans.

The premises considered, petitioner prays that your honor will

grant him an order for the seizure and sale of the mortgaged property, and that a writ may issue thereon, addressed to the sheriff of the parish of Rapides, directing him to seize and sell the same according to law to satisfy the amount of the note herewith
1063 filed, besides three $\frac{50}{100}$ dollars, costs of protest, and costs of suit, inclusive of five per cent. commission as attorney's fees on the amount of the note herewith filed & interest; and, further, your petitioner prays for general relief, &c.

(Signed) J. N. ELGEE,
Att'y for Petitioner.

Endorsed: We are responsible for costs. (Signed) W. & D. Urquhart.

Protest. Filed March 22nd, 1861.

UNITED STATES OF AMERICA,
State of Louisiana.

By this public instrument of protest be it known that on this eighteenth day of March, in the year one thousand eight hundred and sixty-one, at the request of A. Montsuil, Esqr., cashier of the Bank of Louisiana, holder of the original note whereof a true copy is on the reverse hereof written, I, Felix Grima, notary public in and for the city and parish of New Orleans, duly commissioned and sworn, by my deputy, Chas. F. Barry, presented said note to Messrs. W. & D. Urquhart, at their office, where the same is made payable, and demanded payment thereof, and was answered
1064 that no funds had been deposited there to pay said note.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interests suffered or to be suffered for want of payment of the said note.

Thus done and protested in the presence of Chas. F. Barry and Ernest Petitpain, both of this city, witnesses.

In testimony whereof I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

[SEAL] (Signed) F. GRIMA; *Not. Pub.*

Note. Filed March 22nd, 1861.

$10,833.33\frac{1}{3}$. NEW ORLEANS; *Dec. 27th,* 1859.

On the fifteenth of March, 1861, after date, I promise to pay to the order of myself, at office of Messrs. W. & D. Urquhart, in this city, ten thousand eight hundred and thirty-three $33\frac{1}{3}$-100 dol-
1065 lars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

(Signed) S. DUNCAN LINTON.

[Written across the face:] *Ne varietur.* New Orleans, Dec. 27th, 1859. (Sig.) Theo. Guyol, N. P.

Endorsed: (Signed) S. Duncan Linton. (Signed) W. & D. Urquhart. (Signed) Aaron Cohen, per *pro* David McCoard.

Act of Mortgage. *Filed March 22nd,* 1861.

Stephen D. Linton
to
W. & D. Urquhart. } No. 14708. 4th Dist. Court.

UNITED STATES OF AMERICA,
State of Louisiana.

Be it known that on this twenty-seventh day of the month of December, in the year of our Lord one thousand eight hundred and fifty-nine, and of the Independence of the United States of America the eighty-fourth, before me, Theodore Guyol, a notary public, duly commissioned and sworn, for the parish of Orleans, State of Louisiana, and in the presence of the witnesses hereinafter named and undersigned—

Personally appeared Stephen Duncan Linton, of the parish
1066 of East Baton Rouge, in this State, who acknowledged that he is justly and truly indebted unto Wm. Urquhart, David Urquhart, and Bayard Milligan, composing the firm of W. & D. Urquhart, of this city, in the sum of one hundred and thirty thousand dollars, borrowed money, for which he has furnished his twelve promissory notes, for the sum of ten thousand eight hundred and thirty-three dollars and thirty-three and one-third cents each, drawn to the order of and endorsed by himself, dated this day and made payable at the office of the said firm, in this city, respectively, on the tenth day of January, the tenth day of February, and the tenth and fifteenth days of March in each of the years eighteen hundred and sixty-one, eighteen hundred and sixty-two, and eighteen hundred and sixty-three, with interest from and after maturity. If not then punctually paid at the rate of eight per cent. per annum until final payment.

Which notes, after having been paraphed by me, the said notary, in order to identify them with this act, were delivered to the said David Urquhart, who hereby acknowledges the receipt thereof in the name of his said firm; and in case it shall become nec-
1067 essary to institute legal proceedings for the recovery of the amount of the said notes or of any part thereof the said Stephen D. Linton binds himself to pay the fees of the attorney-at-law who may be employed for that purpose, which fees are hereby fixed at five per cent. on the amount sued for.

Now, therefore, in order to secure the punctual payment of the said notes at maturity, together with all eventual interest and attorney's fees, the said Stephen D. Linton moreover declared that he does by these presents mortgage, affect, and specially hypothecate, in favor of the said firm of W. & D. Urquhart and to enure to the

use and benefit of any and all future holder or holders of the said notes, the said David Urquhart being here present and accepting on behalf of his said firm, the following-described property and slaves, to wit:

A certain plantation, known by the name of Quantico plantation, situate in the parish of Rapides, in this State, on the east side of Bayou Boeuf, and containing about eighteen hundred acres, 1068 the said plantation lying at the mouth of Bayou Robert, about twelve miles from the town of Alexandria, and being bounded on the upper side by the lands of Chembers and on the lower side by L'Esperanza plantation of the late John Linton, deceased, together with the buildings and improvements thereon, the engines, machinery, and apparatus, stock, cattle, horses, mules, farming utensils, and implements of husbandry on the said plantation, and the following-named slaves for life employed on and attached thereto, viz:

Arthur	aged	41 yrs.	Lize	aged	6 yrs.
Caroline	"	30 "	Davy	"	59 "
Ben	"	55 "	Harriet	"	59 "
Rios	"	55 "	Harriet	"	18 "
Arthemise	"	27 "	George	"	35 "
Gilbert	"	47 "	Julian	"	30 "
Viney	"	65 "	Nelly	"	40 "
Rainey	"	14 "	Sam.	"	48 "
Tom	"	65 "	Martha Arm	"	10 "
Oliver	"	45 "	Sam.	"	6 "
Amos	"	28 "	Elizabeth	"	5 "
Jack	"	29 "	George	"	4 "
Joe	"	27 "	Nelly	"	1 "
Adam	"	21 "	Finey	"	45 "
Lilly	"	26 "	Susan	"	35 "
Carter Fink	"	45 "	Stephen	"	14 "
Bob Lamb	"	58 "	Chas. C.	"	65 "
Amy	"	42 "	Delphy	"	40 "
1069 Eliza Ann	aged	14 yrs.	Celia	aged	14 yrs.
Abner	"	8 "	February	"	9 "
Nathan	"	6 "	Gracy	"	3 "
Susannah	"	5 "	Joseph	"	2 "
Daphne	"	2 "	Old Celia	"	55 "
George R.	"	59 "	Bill Moore	"	65 "
Fanny	"	45 "	Chas. Foster	"	35 "
Willis	"	21 "	Julia	"	26 "
Joe C.	"	45 "	Catherine	"	8 "
Endy	"	45 "	Joe	"	6 "
Maria	"	11 "	Gilbert	"	5 "
Judy	"	6 "	Wilson	"	1 "
Morris	"	5 "	Simon	"	65 "
Rebeca	"	2 "	Rosetta	"	35 "
Spencer	"	70 "	Virginia	"	7 "
Milly	"	58 "	Ellen	"	3 "

Spencer aged 13 yrs.
Kissy " 25 "
Amanda " 4 "
Jinney " 2 "
Mary Jane " 25 "
Henry " 1 "
William B. " 35 "
Minerva " 35 "
John C. " 12 "
Melissa " 11 "
Dick " 4 "
Elzey " 6 "
Hester " 2 "
Old Jane " 55 "
Joe C. " 41 "
Serena " 34 "
1070 William aged 6 yrs.
Dan. " 3 "
Lucinda " 1 "
Winney " 17 "
Barbara " 16 "
Dempsey " 50 "
Winney Old " 39 "
James " 12 "
Duncan " 11 "
Peter " 7 "
Van " 6 "
Mary Ann " 26 "
Alfred " 2 "
Velia " 5 "
Preston " 40 "
Sarah " 35 "
Anthony " 34 "
Ellen " 28 "
Laura " 6 "
Kenyon " 2 "
Battle " 55 "
Mathilda " 40 "
Melinda " 29 "
Jefferson " 1 "
Squire " 38 "
Zilpha " 38 "
Nelson " 55 "
Clem. " 50 "
Eliza " 40 "
William " 20 "
Henrietta " 25 "
Melissa " 3 "
1071 Jane aged 10 yrs.
Andrew " 25 "
Lewis " 55 "

Anthony aged 2 yrs.
Pattey " 1 "
Beverly " 55 "
Emily " 40 "
Ellis " 16 "
Winzey " 10 "
Cæsar " 3 "
Richard " 39 "
Lucy " 38 "
Jim " 25 "
Charlotte " 14 "
Jones " 9 "
Ashton " 1 "
Jessy " 55 "
Rolla " 60 "
Clarissa " 35 "
Jim W. aged 27 yrs.
Eleanor " 25 "
Caroline " 5 "
Patrick " 45 "
Elizabeth " 29 "
Mack " 15 "
Prescilla Ann " 11 "
Denis " 9 "
Bailey " 41 "
Fenton " 12 "
Caroline " 6 "
Ananias " 4 "
Wilson " 2 "
Moses " 55 "
Sophia " 40 "
Elicy " 10 "
Charity " 5 "
Vizey " 4 "
Maria " 3 "
Barton " 45 "
Solomon " 35 "
Barton " 40 "
Margaret " 38 "
Rosa " 16 "
Jim D. " 15 "
Sally " 12 "
Summerfield " 10 "
Dangerfield " 5 "
Eli " 8 "
Isaac " 9 "
Amelia " 80 "
Zack. " 80 "
Old John aged 65 yrs.
Abraham " 22 "
Adam " 15 "

Margaret	aged	45	yrs.	Armistead	aged 35 yrs.
Ellick	"	22	"	Henry Holliday	" 35 "
John	"	20	"	Old Jack	" 65 "
Atoline	"	26	"	Eliza B.	" 50 "
Homer	"	25	"	Lucinda	" 1 "
Hamilton	"	14	"	Emeline	" 1 "
Rachael	"	8	"	Betsy	" 40 "
Lewis	"	6	"	Ephraim	" 15 "
Francis	"	5	"	Mary	" 8 "
Nicholas	"	45	"	Cornelius	" 21 "
Roxana	"	30	"	Washington	" 12 "
Mona	"	3	"		
Silas	"	2	"		
Harriet	"	48	"		

And all present and future increase and issue of the said slaves.

He, the said Stephen Duncan Linton, promising and binding himself not to sell, alienate, or encumber the said plantation and slaves or any part thereof to the prejudice of this mortgage, and he moreover consents and agrees that any and all legal proceedings for the recovery of the amount of the indebtedness hereinbefore acknowledged and declared and for the foreclosure of this mortgage may be instituted and carried to final judgment and execution
1072 in any of the district courts of New Orleans or other court of competent jurisdiction in said city, hereby waiving and renouncing the benefit of any and all laws, present and future, providing that defendants can only be sued or proceeded against before the judge of the parish or district wherein they reside or have their domicile.

By reference to the annexed certificate of the recorder of the parish of Rapides aforesaid it will appear that the said plantation and slaves are subject to a special mortgage granted by the said Linton in favor of the said firm of W. & D. Urquhart on the second day of April last past to secure the payment of sixty-six thousand dollars.

And here the said Urquhart declared that in the name of his said firm he dispenses with the production of a certificate from the recorder aforesaid to shew the mortgages now existing on the said plantation and slaves, and of one from the recorder of the parish of East Baton Rouge, in which the said Linton resides, to shew the mortgages, if any, recovered against the said slaves in that parish and to be annexed to this act, as required by law, the said Linton
1073 binding himself to cause this act to be duly recorded and to furnish the certificates above mentioned to the undersigned notary as soon as possible.

And in order more fully to secure the payment of the said promissory notes at maturity and to provide the means therefor the said Linton moreover declared that he does by these presents pledge unto the said firm of W. & D. Urquhart all the crops that shall be raised and gathered on the said plantation during the existance of this mortgage, and in consequence of this pledge and in order to carry the same into full force and effect he binds himself and his heirs to con-

sign and ship all the said crops to the said W. & D. Urquhart for sale in this city, it being well understood and agreed that the said firm shall be entitled to the usual mercantile commissions, charges, &c., upon all crops which shall or may be sold by them by virtue of this pledge and agreement. And now to these presents personally came and appeared Madam Mary Perkins, of lawful age, wife of the said Stephen Duncan Linton, who, after having taken cognizance of the foregoing act, which I, the said notary, carefully read
1074 and explained to her, declared and said that she approved and ratified the same, and, further, that it is her wish and intention to release in favor of the said mortgagees the plantation, &c., herein described from the matrimonial, dotal, paraphernal, and other rights, and from any claims, mortgages, or privileges to which she is or may be entitled, whether by virtue of her marriage with her said husband or otherwise.

Whereupon I, the said notary, did inform the said Mrs. Linton, apart and out of the presence and hearing of her said husband, that she had by law a legal mortgage upon the property of her said husband: First, for the restitution of her dowry and for the reinvestment of the dotal property sold by her husband and which she brought in marriage, reckoning from the celebration of the marriage; secondly, for the restitution and reinvestment of the dotal property by — acquired since marriage, whether by succession or donation from the day the succession was opened or the donation perfected; thirdly, for nuptial presents; fourthly, for debts by her contracted with her said husband, and, fifthly, for the amount of her paraphernal property alienated by her and received by her said husband or otherwise disposed of for the individual in-
1075 terest of her said husband; that in making her intended renunciation she would deprive herself irrevocably and forever of all rights of reclamation against the plantation, slaves, &c., herein described, whether under mortgage, privilege, or otherwise.

And the said Mrs. Linton did thereupon declare unto me, notary, that she was fully aware of and acquainted with the nature and extent of the matrimonial, dotal, paraphernal, and other rights and privileges thus secured to her by law on the property of her said husband, and that she nevertheless did persist in her intention of renouncing not only all the rights claimed and privileges hereinbefore enumerated and described, but all others of any kind or nature whatever to which she may be entitled by any laws now or heretofore in force in the State of Louisiana.

And the said Stephen Duncan Linton being now present, aiding — authorizing the said Mrs. Linton in the execution of these presents, she, the said Mrs. Linton, did again declare that she did and doth hereby make a formal renunciation and relinquishment of all her said matrimonial, dotal, paraphernal, and other rights, claims, and privileges in favor of the said mortgagees, binding herself and her heirs at all times to sustain and acknowledge the validity
1076 of this renunciation.

Done and passed at New Orleans, in my office, the day, month, and year aforesaid, in the presence of John Perkins and Henry

Perkins, witnesses, who have signed with the appearers and me, notary, after reading the whole.

(Signed) MARY LINTON.
S. DUNCAN LINTON.
DAVID URQUHART.
J. PERKINS.
H. PERKINS.
THEO. GUYOL, *Not. Pub.*

A true copy.
New Orleans, March 21st, 1861.

(Signed) THEO. GUYOL, *N. P.*

Letter, J. N. Elgee to De Choiseul.

Mr. De Choiseul will oblige me by getting the required order from Judge Price in the case of Cohen *vs.* Linton and directing two copies of petition and order to be made out at once, so that the sheriff may serve Mr. Linton, if possible, to-day. The clerk will also be directed to make out the writ for the sheriff of Rapides. I wish to have the writ to-morrow and the sheriff's return of notice of seizure, so that I can send the papers at once to Alexandria.

(Signed) J. N. ELGEE.

22 March, 1861.

1077 *Judgment.*

By reason of the prayer of the preceeding petition and on examination of the documents filed with the same, it is ordered that a writ of seizure and sale issue to sheriff of the parish of Rapides, directing him to seize and sell the property of Steven Duncan Linton as set forth in the act of mortgage executed by him on the 27th of Dec., 1869, in favor of W. & D. Urquhart, and a copy of which is filed with the petition, to pay and satisfy the sum of ten thousand eight hundred and thirty-three .33⅓ dollars, with eight per cent. interest thereon from the 18th of March, 1861, until paid, together with three $\frac{50}{100}$ dollars costs of protests and costs of these proceedings, inclusive of five per cent. commissions as attorney's fees on the said sum of $10,833.33⅓, besides interest.

And it is further ordered that the said mortgaged property be sold for cash to an amount sufficient to pay and satisfy the decree herein rendered and upon terms of credit to correspond with the falls due of the mortgage notes due in the years 1882 and 1863. Further ordered that the def't have notice hereof.

1078 Done and signed, at chambers, on this 22nd day of March, A. D. 1861.

New Orleans, fourth dist. court.

(Signed) J. W. PRICE, *Judge.*

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

I, W. J. McGeegan, clerk of the civil district court for the parish of Orleans, do hereby certify that the above and foregoing eighteen pages do contain a true, correct, and complete transcript of record of all the proceedings had, of all the documents filed, and evidence adduced in the cause wherein Aaron Cohen is plaintiff and S. D. Linton is defendant, instituted in the late fourth district court for the parish of Orleans under the No. 14708, and transformed to the aforesaid civil district court for the parish of Orleans under the No. 11571 of the docket thereof.

In testimony whereof I have hereunto set my hand and [SEAL.] affixed the seal of this court, at the city of New Orleans, on this 9th day of June, A. D. 1884.

(Signed) W. J. McGEEHAN,
Clerk Civil District Court.

1079 STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

W. & D. URQUHART
vs.
STEPHEN DUNCAN LINTON. } No. 14669. Fourth D. Court.

U. S. Circuit Court, Eastern District of Louisiana.

MARIE P. EVANS *et als.*
vs.
DAVID URQUHART *et als.* } No. 7672.

Offered in evidence on behalf of the State National Bank, June 10th, 1884.

(Signed) F. A. WOOLFLEY,
Special Examiner.

1080 *Petition and Account. Filed March 15th*, 1861.

W. & D. URQUHART
vs.
STEVEN DUNCAN LINTON. } Fourth District Court. No. 14669.

To the Honorable J. W. Price, judge of the fourth district court of New Orleans:

The petition of W. & D. Urquhart, who resides and do a commercial business in the city of New Orleans, respectfully represents—

That Stephen Duncan Linton, who resides in New Orleans, is truly indebted to your petitioners in the sum of three thousand one hundred and eight $\frac{0}{100}$ dollars, with 8% *it* interest on twenty-six hundred and eight $\frac{0}{100}$ dollars from the 21st January, 1861, until paid, & legal interest on five hundred dollars from legal demand

until paid for this, viz., that petitioners have advanced defendant at sundry times up to the 31st January sums amounting, with interest, to $23,104.49, which has been reduced by several credits $2,608.01, all of which will more fully appear by the detailed bill hereunto annexed for reference & made a part of this petition.

Petitioner- further show that by an act of mortgage given by defendant to petitioners on 27 of Dec'r, 1857, passed before Theo. Guyol, not. pub., to secure the payment of twelve promissory notes for the sum of ten thousand eight hundred & thirty-three dollars
1081 and thirty-three one-third cents each, drawn to the order of defendant & endorsed by himself, dated the 27th December, 1859, payable at the house of the firm of W. & D. Urquhart, respectively on the tenth of January, the tenth of February, and the tenth & fifteenth of March in each of the years 1861, 1862, & 1863, "more fully to sucure the payment of said notes at maturity and to provide the means thereto," defendant pledged himself to petitioner to ship to them and consign them for sale all the crops that should be raised & gathered on his plantation therein mortgaged in the parish of Rapides during the existance of said mortgage, paying to petitioner such commissions & charges upon said crops as according to mercantile usage.

Petitioner further represents that in violation of said agreement defendant shipped four hundred bales of cotton of his last crop made on said plantation to other persons or merchants, causing a loss of the commissions on the same to petitioner of five hundred dollars, as will more fully appear by the account annexed. Petitioner also represents that defendant, although thereunto amicable requested, refuses to pay the amount for which he is indebted as aforesaid.

Petitioner therefore prays that said Stephen Duncan Linton be cited to appear and answer this petition, & that he be ordered to answer in writing, under oath, the annexed interrogatories, and after due
1082 proceeding had according to law there be judgement in favor of petitioners for the aforesaid sum of three thousand one hundred and eight $\frac{0}{100}$ dollars, with interest as aforesaid and costs of suit; and petitioners prays for general relief.

(Signed) C. DE CHOISEUL.

Interrogatories to Be Propounded and Answered by S. D. Linton, Annexed to Petition.

Int. —. Have you not shipped or consigned cotton for your plantation in the parish of Rapides, mortgaged to W. & J. Urquhart by act before T. Guyol, not. pub., on the 27th December, 1859, to any other persons than W. & D. Urquhart since the 27th Dec., 1859? How much did you ship or consigned to any other person or persons? Have you not shipped four hundred bales?

2d. Have you not shipped, consigned, sold, or produced for sale cotton of the last crop of your plantation in Rapides, described above, to some other person or persons or to some other commercial house

than that of W. & D. Urquhart; if yes, to what amount? Does it not amount to four hundred dollars?

3rd. Have you not since the 27th Dec'r, 1859, disposed of cotton proceeding from your plantation in Rapides, mortgaged to W. & D. Urquhart, in some other way than by sending it to W. & D. Urquhart, whereby they loss their commissions? Have you not disposed of at least four hundred bales in that way? State the full amount.

1083 *S. D. Linton in Account Current & Int. with W. D. Urquhart.*

1860.							
April	2.	To fr't bills str. J. D. Perry	1	25	304		08
	9.	Telegraphic despatch	2	40	297		15
	17.	To cash paid him	150	"	289	9	63
	23.	" sup't to Opera House Club	25	"	283	1	57
	26.	" freight bills str. Rapides	21	80	280	1	35
May	2.	" house rent to Mrs. Stillman	116	65	274	7	09
	8.	" bill of Cruzot & Wilson for cigars	260	25	268	15	50
	"	" cash paid J. Perkins	100	"	--	5	96
	15.	" freight bill str. Rapides	17	"	261		99
	18.	" cash paid him	200	"	258	11	47
	28.	" d'ft favor A. Gaines	500	"	248	27	56
June	2.	" house rent to Mrs. Stillman	116	65	243	6	29
	6.	" drayage on furniture		50	239		03
July	2.	" d'ft C. P. Leverich for passage	791	70	212	37	29
"	9.	" bill of Henderson & Gaines	8	62	205		39
	17.	" d'ft favor H. V. Babin, sh'ff	642	34	197	28	12
	31.	" freight bill str. Horner	6	"	183		84
August	1.	" invoice rope, twine, &c.	171	29	182	6	92
Sept.	18.	" fr't bill str. Morgan Nelson	12	50	135		37
Oct.	19.	" d'ft favor C. P. Leverich	540	"	104	12	48
	22.	" invoice rope & twine	89	55	101	2	01
Nov.	1.	" insurance cotton in gin-house	600	"	91	12	14
	2.	" fr't bill str. Rob't Watson	8	25	90		16
	12.	" d'ft favor I. G. Tyson	396	57	80	7	05
	17.	" note due this day	9,000	00	75	150	"
	19.	" invoice rendered	355	18	73	5	76
	20.	" fr't bill str. Benton	21	40	72		34
	23.	" " " Rapides	2	50	69		04
Dec.	10.	" cash paid him	100	"	52	1	10
	27.	" freight & drayage, 1 box		50			
1861.							
Jan.	7.	" " bill, ship Evening Star	175	25			93
			$14,433	15		353	07

1084

1860.							
Dec.	27.	To d'ft favor M. N. Borde	4,017	77	36	34	14
		" " " "	2,958	"	35	23	"
1861.							
Jan.	6.	" " " "	1,426	65	25	7	92
"	23.	" drayage sundries	16		8		03
	29.	" fr't bill str. Rapides	15	25	2		01
	31.	" interest in % to debit	237	67			
			$23,104	49		416	17

No. 14669. Filed March 15th, 1861.

CREDIT.

1860.							
Ap'l	1.	By balance as per last acc't rendered	16	75	305	1	13
	17.	" amount transferred from % Richland by order J. Perkins.	58	"	289	3	72

Ap'l	19.	By proceeds 1 bale of cotton				50	54	134	1 50
Dec.	7.	" " 204 " "				7,234	47	55	88 42
"	18.	" " 96 " "				3,077	45	44	80 09
1861.									
Jan.	7.	" " 157 " "				5,934	93	24	31 65
"	"	" " 84 " "				4,124	34	"	21 99
"	31.	" balance cash to debit				2,608	01		
		Balance interest				----			237 67
						$23,104	49		416 17

DR.

1861.
Jan'y 31. To balance cash (with 8% from date) ---------- $2,608 01

(Signed) W. & D. URQUHART.

1085 *Order.*

It is ordered that the defendant answer, under oath and in writing within ten days from the service hereof, the interrogatories herein propounded to him by plaintiffs.

New Orleans, March 15th, 1861.

(Signed) J. W. PRICE, *Judge.*

Bill Annexed to Petition.

NEW ORLEANS, *March 15th*, '61.

S. D. Linton, Esq., to W. & D. Urquhart.

Commission on 400 bales cotton not shipped to us, $1.25 per bale ---------- $500 00

Sheriff's Return.

Received March 15th, 1861, and on the same day served a copy of citation and accompanying petition and interrogatories on Stephen Duncan Linton debt herein personally.

(Signed) W. J. HUET, *D'y Sh'ff.*

Declinatory Exception. Filed March 25th, 1861.

W. & D. URQUHART
vs.
STEPHEN D. LINTON. } Fourth District Court. No. 14669.

And now comes Stephen Duncan Linton, of the parish of East Baton Rouge, who has been cited as defendant to this suit, and except- to the jurisdiction of this honorable court for that this
1086 appearer is not a resident of New Orleans, but he has his domicil in the parish of East Baton Rouge, where alone he is amenable to any demand by the plaintiffs relative to the subject-matter of this suit.

Wherefore he prays that there be judgment in his favor in this declinatory exception, and that plaintiff's petition be dismissed at their costs.

(Signed) H. M. SPOFFORD, *Of Counsel.*

Notice of Trial.

W. & D. URQUHART
vs.
STEPHEN DUNCAN LINTON. } No. 14669.

To H. M. Spofford, Esq., Stephen Duncan Linton:

You are hereby notified that the exception filed was fixed for trial on Tuesday, the 16th day of April, 1861, at 10 o'clock a. m.

Clerk's office, New Orleans, April 9th, 1861.

(Signed) JULES VUNNE, *D'y Cl'k.*

Sheriff's Return.

Received April 10th, 1861, and on the same day served a copy of this notice on H. M. Spofford personally.

(Signed) ROBERT SWAIN, *D'y Sh'ff.*

1087 STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

I, W. J. McGeehan, clerk of the civil district court for the parish of Orleans, do hereby certify that the afore and foregoing do contain a true and correct copy of the petition, order of court, the account and bill hereto annexed, declinatory exception, notice of trial of same, and sheriff's return thereon in the cause entitled W. & D. Urquhart *versus* Stephen Duncan Linton, numbered 14669 of the docket of the late fourth district court for the parish of Orleans, duly transferred to the aforesaid civil district court for the parish of Orleans under the No. 11574 of the docket thereof.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the seal of this court, at the city of New Orleans, on this 9th day of June, in the year of our Lord *A. D.* 1884.

(Signed) W. J. McGEEHAN,
Clerk Civil Dist. Court.

1088 STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, City of New Orleans.

STEPHEN DUNCAN LINTON
vs.
DAVID URQUHART. } No. 14846. In the 4th District Court of New Orleans.

U. S. Circuit Court, Eastern District of Louisiana.

MARIE P. EVANS *et als.*
vs.
DAVID URQUHART *et als.* } No. 7672.

Offered in evidence on behalf of the State National Bank June 10th, 1884.

(Signed) F. A. WOOLFLEY,
Special Examiner.

1089 STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, City of New Orleans.

STEPHEN DUNCAN LINTON *vs.* DAVID URQUHART. } No. 14846. In the Fourth District Court of New Orleans.

Petition and Opposition. Filed April 20th, 1861.

To the honorable the judge of the fourth district court of New Orleans:

The petition and opposition of Stephen Duncan Linton, a resident of the parish of East Baton Rouge, respectfully represents—

That David Urquhart, a resident of New Orleans, has lately (to wit, on or about the 15th March last) sued out from your honorable court an order of seizure and sale against certain property of this opponent situated in the parish of Rapides and known as the Quantico plantation, including the slaves thereon, one hundred and ninety-five in number, with their increase,
1090 and all of the personal property thereto attached. The said order purports to have been issued for the purpose of paying and satisfying by sale of the property aforesaid the sum of thirty-two thousand and five hundred dollars ($32,500), with eight per cent. per annum interest on one-third of said sum from the 13th January, 1861, until paid, and like interest on one other third from the 13th February, 1861, until paid, and like interest on *and like interest on* the remaining third of said sum from the 13th March, 1861, until paid, besides ten $\frac{50}{100}$ dollars, costs of protest and the costs of executory process, including five per cent. upon the foregoing amounts claimed as attorneys' fees or commissions for suing out the process aforesaid; that said indebtedness of this petitioner to the said David Urquhart is by him alledged to be evidenced by three promissory notes, each one for ten thousand eight hundred and thirty-three $33\frac{1}{3}$-100 dollars, drawn by this opponent to his own order
1091 and endorsed in blank and filed together with protests and with the petition for seizure and sale, which are said to constitute a portion of twelve promissory notes alleged to have been executed on the 27th day of December, in the year 1859, by this opponent to and in favor of W. & D. Urquhart, and forming an aggregate of one hundred and thirty thousand dollars, all alleged to be secured by special mortgage upon the property aforesaid executed by this opponent before Theodore Guyol, a notary public, of New Orleans, on the said 27th day of December, 1859; all which will more fully appear by reference to the suit on file in this court No. 14665.

Now, this petitioner avers that the said David Urquhart, one of the original mortgagees, who has sued out the executory process aforesaid, granted this apparent time for the payment of the instalments of his indebtedness aforesaid, due respectively the 13th January, 1861, the 13th February, 1861, the 13th March; 1861, and the 18th March, 1861, and covenanted and agreed to allow your peti-

tioner until the corresponding dates of the year 1862 to pay
1092 the said instalments nominally due in 1861, although this circumstance is not mentioned in the notes or in the act of mortgage; and petitioner represents that the said David Urquhart has sued out the said executory process upon three of the said notes, which he had agreed with petitioner to extend to the year 1862 (eighteen hundred and sixty-two), in violation of the understanding and agreement between them that time had been granted as aforesaid; in consequence whereof the sheriff of Rapides parish has seized and advertized for sale, upon the first Saturday of May next, your petitioner's Quantico plantation and other property aforesaid to satisfy the sums claimed by said David Urquhart to be now due him by petitioner, although they will not really be due until the year 1862, to the great damage of this opponent, whose property will be sacrificed without the interposition of your honor's writ of injunction for the protection of his rights.

Wherefore, the premises and the annexed affidavit considered, this opponent prays for an injunction, as authorized by article- 738,
1093 739, & 740 of the Code of Practice, ordering the sheriffs of the parish of Rapides to suspend the sale aforesaid until the hearing and final determination of the court upon this opposition.

Petitioner prays for citation to David Urquhart for services of the opposition upon him and for all suitable orders in the premises, for judgement revoking the order of seizure and sale aforesaid, for costs, and for general relief.

(Signed) H. M. SPOFFORD, *Of Counsel.*

Affidavit.

Stephen Duncan Linton, being duly sworn, doth depose and say that all the facts and allegations set forth in the within petition are true and correct, and that an injunction is necessary to protect affiant's rights.

New Orleans, Apr-l 20th, 1861.

(Signed) S. DUNCAN LINTON.

Sworn to and subscribed before me this 20th Ap-il, 1861.

(Signed) J. W. PRICE, *Judge.*

1094 *Order.*

Let this petition of opposition be filed, and let an injunction issue as within prayed for & without security and according to law.

New Orleans, April 20th, 1861.

(Signed) J. W. PRICE, *Judge.*

Citation. Issued 20th Apr-l, 1861.

STEPHEN DUNCAN LINTON
vs.
DAVID URQUHART. } Fourth District Court. No. 14846.

STATE OF LOUISIANA:

Fourth District Court of New Orleans.

Mr. David Urquhart, of New Orleans:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the fourth district court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the Honorable John W. Price, judge of the said court, the 20th day of April, in the year of our Lord 1861.

(Signed) G. LUMINAIS, *D'y Cl'k.*

1095 *Sheriff's Return to Citation.*

Received April 20th, 1861, and on the 22nd day of the same month and year served a copy of this citation and accompanying petition on David Urquhart, defendant herein, personally; ret. same day.

Sh'ff's fee, $1.00.

(Signed) W. J. HUET, *D'y Sh'ff.*

Writ of Injunction. Issued April 20th, 1861.

Fourth District Court of New Orleans.

STEPHEN DUNCAN LINTON
vs.
DAVID URQUHART. } No. 14846. Fourth District Court of N. O.

The State of Louisiana to the sheriff of the parish of Rapides, Greeting:

You are hereby commanded and enjoined, in the name of the State of Louisiana and of the fourth district court of New Orleans, to suspend all further proceedings under and by virture of the writ of seizure and sale issued from this honorable court in the case of David Urquhart *vs.* Stephen Duncan Linton, No. 14665 of
1096 the docket of said court; and you are specially enjoined against proceeding to the sale of the Quantico plantation and other property of Stephen Duncan Linton, in the parish of Rapides, seized by you under said writ, and you are so commanded and enjoined until the further order of this court.

Witness the Honorable John W. Price, judge of our said court, at

the city of New Orleans, this 20th day of April, in the year of our Lord eighteen hundred and sixty-one, and in the 85th year of the Independence of the United States.

1097 & 1098 STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

I, W. J. McGeehan, clerk of the civil district court for the parish of Orleans, do hereby certify that the above and foregoing nine pages do contain a true, correct, and complete copy of the petition of opposition, affidavit, order, citation, sheriff's return therein, and the writ of injunction issued in the cause entitled Stephen Duncan Linton *versus* David Urquhart, No. 14846 of the docket of the late fourth district court for the parish of Orleans, and duly transfer-ed by operation of law to the aforesaid civil district court for the parish of Orleans under the No. 11575 of the docket thereof.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, on this 9th day of June, A. D. 1884.

[SEAL.] (Signed) W. J. McGEEHAN,
Clerk Civil Dist. Court.

1099 STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, City of New Orleans.

THE LOUISIANA STATE BANK, STATE NATIONAL BANK, & Succ'r, *vs.* STEPHEN DUNCAN LINTON. } No. 17703. In the Fourth District Court of New Orleans.

Transcript.

U. S. Circuit Court, Eastern District of Louisiana.

MARIE P. EVANS *et als.* *vs.* DAVID URQUHART *et als.* } No. 7672.

Offered in evidence on behalf of the State National Bank June 10th, 1884.

(Signed) F. A. WOOLFLEY,
Special Examiner.

1100 STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, City of New Orleans.

THE LOUISIANA STATE BANK
vs.
STEPHEN DUNCAN LINTON. } No. 17703. Fourth Dist. Court of New Orleans.

Petition. Filed Sept. 26th, 1866.

To the Honorable Paul E. Thèard, judge of the fourth district court of New Orleans:

The petition of the Louisiana State Bank, a corporation duly established by the laws of the State of Louisiana and having domicile in New Orleans, with respect shows that Stephen Duncan Linton, formerly of the parish of East Baton Rouge and more recently of New Orleans, but at present residing in the Empire of France,
1101 is justly indebted to petitioner in the sum of eighty-six thousand six hundred and sixty-six dollars and two-thirds cents, with interest thereon at the rate of six per cent. per annum as follows:

On $10,833.33⅓ from Jan'y 13th, 1862;
On $10,833.33⅓ from Feb'y 13th, 1862;
On $10,833.33⅓ do. March 13th, 1862;
On $10,833.33⅓ " March 18th, 1862;
On $10,833.33⅓ " Jan'y 13th, 1863;
On $10,833.33⅓ " Feb'y 13th, 1863;
On $10,833.33⅓ " March 13th, 1863;
On $10,833.33⅓ " March 18th, 1863,

until paid, with twenty-six $\frac{20}{100}$ dollars, costs of protest, and five per cent. commissions for attorney's fees on the whole amount thereof for instituting these proceedings, and all which will more fully appear by reference to the eight promissory, hypothecary notes herewith filed, all made by the said Stephen Duncan Linton to his own order and by him endorsed, dated at New Orleans on the 27th of December, 1859, each for the sum of ten thousand eight hundred and thirty-three dollars and thirty-three and one-third cents, payable at the office of W. & D. Urquhart, in said city, respect-
1102 ively, four on the 10th days of January and February and the tenth and fifteenth days of March, in the year 1862, and four on the same days and months, in the year 1863, which notes are the property of petitioners, and have not been paid by said Linton, although demand for the payment thereof was duly made, as will more fully appear by the protests thereof and the notes themselves, which are hereto annexed for reference.

Your petitioners further show that, in order to secure the payment of the said notes and all interest to accrue thereon, as well in favor of said W. & D. Urquhart as any and all other holders or owners thereof, and also five per cent. commissions thereon for attorney's fees in the event of the necessity of instituting judicial proceedings for the recovery of the same, the said Stephen Duncan Linton did, by public act passed before Theo. Guyal, a notary public for the city

and parish, on the said 27th day of December, 1859, confess judgment and specially mortgage and hypothecate a certain cotton plantation in the parish of Rapides, in this State, known as
1103 and by the name of the "Quantico plantation," situated on the east side of Bayou Boeuf, and containing about 1,800 acres, the said plantation lying at the mouth of Bayou Robert, about 12 miles from the town of Alexandria, and being bounded on the upper side by the lands of Chambers and on the lower side by L'Esperanza plantation of the late John Linton, deceased, together with the buildings and improvements thereon, the engines, machinery, and apparatus, stock, cattle, horses, and mules, farming utensils, and instruments of husbandry on the said plantation, together with 195 (then) slaves, all of which will appear by reference to an authentic copy of said act of mortgage hereto annexed.

Petitioner avers that the said Stephen Duncan Linton is represented in this State by his duly authorized attorney-in-fact, Philip Hickley Morgan, Esq., but that recently, as petitioner is informed, the said Linton has become insane and has been interdicted in the Empire of France, and that his wife, Mrs. Mary Jane Perkins,
1104 who is at present in this city, has been appointed provisional administratrix to her said husband by a decree of the civil tribunal of first instance at Paris, rendered April 30th, 1866, and registered May 7th, 1866.

Wherefore petitioner respectfully prays that the said Stephen Duncan Linton be cited through both his said attorneys-in-fact and his said provisional administratrix to appear and answer this petition, and that after due proceedings your petitioner do have and recover judgment against the said Linton for the said sum — eighty-six thousand six hundred & sixty-six dollars and sixty-six and two-thirds cents, with interest as aforesaid until paid; $26.20, costs of protests, and five per cent. commissions on the whole amount for attorney's fees, and with costs of suit; and petitioner prays that the said mortgage be recognized and enforced on the above-described property, and for all general and equitable relief.

(S'g'd) HYAMS & JONAS, *Att'ys.*

I hereby accept service and waive citation of this petition.

(S'g'd) MARY PERKINS LINTON,
Provisional Administratrix of S. D. Linton.

1105 (S'g'd) P. H. MORGAN,
Att'y of S. D. Linton.

Act of Mortgage Annexed to Petition. Filed Sept'r 26th, 1866.

UNITED STATES OF AMERICA,
State of Louisiana.

Be it known that on this twenty-seventh day of the month of December, in the year of our Lord one thousand eight hundred and fifty-nine, and of the Independence of the United States of America the eighty-fourth, before me, Theodore Guyol, a notary public, duly commissioned and sworn, for the parish of Orleans, State of Louis-

iana, and in the presence of the witnesses hereinafter named and undersigned, personally appeared Stephen Duncan Linton, of the parish of East Baton Rouge, in this State, who acknowledged that he is justly and truly indebted unto William Urquhart, David Urquhart, and Bayard Milligan, composing the firm of W. & D. Urquhart, of this city, in the sum of one hundred and thirty
1106 thousand dollars, borrowed money, for which he has furnished his twelve promissory notes for the sum of ten thousand eight hundred and thirty-three dollars thirty-three and one-third cents each, drawn to the order of and endorsed by himself, dated this day and made payable at the office of the said firm, in this city, respectively, on the tenth day of January, the tenth day — February, and the tenth and fifteenth days of March in each of the years eighteen hundred and sixty-one, eighteen hundred and sixty-two, and eighteen hundred and sixty-three, with interest from and after maturity; if not then punctually paid, at the rate of eight per cent. per annum until final payment; which notes, after having been paraphed by me, the said notary, in order to identify them with this act, were delivered to the said David Urquhart, who hereby acknowledges the receipt thereof in the name of his said firm; and in case it shall become necessary to institute legal proceedings for the recovery of the amount of the said notes or of any part thereof the said Stephen D. Linton hereby binds himself to pay the fees of the attorney-at-law who may be employed for that
1107 purpose, which fees are hereby fixed at five per cent. on the amount sued for.

Now, therefore, in order to secure the punctual payment of the said notes at maturity, together with all eventual interest and attorney's fees, the said Stephen D. Linton moreover declared that he does by these presents mortgage, affect, and specially hypothecate in favor of the said firm of W. & D. Urquhart and to enure to the use and benefit of any and all future holders of the said promissory notes, the said David Urquhart being here present accepting on behalf of his said firm, the following-described property and slaves, to wit: A certain plantation, known by the name of Quantico plantation, situated in the parish of Rapides, in this State, on the east side of Bayou Boeuf, and containing about eighteen hundred acres, the said plantation lying at the mouth of Bayou Robert, about twelve miles from the town of Alexandria, and being bounded on the upper side by the lands of Chambers and on the lower side by the lands of L'Esparanza plantation of the late John Linton, deceased—

Together with the buildings and improvements thereon,
1108 the engines, machinery, and apparatus, stock, cattle, horses, mules, farming utensils, and implements of husbandry on the said plantation, and the following-named slaves for life employed on and attached thereto, viz:

Arthur	aged 41 yrs.	Harriet	aged 59 yrs.
Caroline	" 30 "	Harriet	" 18 "
Ben	" 55 "	George	" 35 "
Rias	" 55 "	Julien	" 30 "

Arthemise	aged	27	yrs.	Nelly	aged	45	yrs.
Gilbert	"	47	"	Sam.	"	48	"
Viney	"	65	"	Martha Ann	"	10	"
Rainey	"	14	"	Sam.	"	6	"
Tom	"	65	"	Elizabeth	"	5	"
Oliver	"	45	"	George	"	4	"
Amos	"	28	"	Neely	"	1	"
Jack	"	29	"	Tiney	"	45	"
Joe	"	27	"	Susan	"	35	"
Adam	"	21	"	Stephen	"	14	"
Lilly	"	26	"	Charles C.	"	65	"
Carter Fink	"	45	"	Delphy	"	40	"
Bob Lamb	"	58	"	Eliza Ann	"	14	"
Amy	"	42	"	Abner	"	8	"
Lize	"	6	"	Nathan	"	6	"
Davy	"	59	"	Susannah	"	5	"
Daphire	"	2	"	Gracy	"	3	"
George R.	"	59	"	Joseph	"	2	"
Fanney	"	45	"	Old Celia	"	55	"
Willis	"	21	"	Bill Moore	"	65	"
Joel C.	"	45	"	Ch's Foster	"	35	"
Eady	"	45	"	Julia	"	26	"
Maria	"	11	"	Catherine	"	8	"
1009 Judy	aged	6	yrs.	Joe	aged	6	yrs.
Morris	"	5	"	Gilbert	"	5	"
Rebecca	"	2	"	Wilson	"	1	"
Spencer	"	70	"	Simon	"	65	"
Milly	"	58	"	Rosetta	"	35	"
Spencer	"	13	"	Virginia	"	7	"
Kissy	"	25	"	Ellen	"	3	"
Amanda	"	4	"	Anthony	"	2	"
Jimmy	"	2	"	Patsey	"	1	"
Mary Jane	"	25	"	Beverly	"	55	"
Henry	"	1	"	Emily	"	40	"
William B.	"	35	"	Ellis	"	16	"
Minerva	"	35	"	Winzey	"	10	"
Jno. C.	"	12	"	Cæsar	"	3	"
Melissa	"	11	"	Richard	"	39	"
Dick	"	4	"	Lucy	"	38	"
Elsey	"	6	"	Jim	"	25	"
Hester	"	2	"	Charlotte	"	14	"
Old Jane	"	55	"	Jane	"	9	"
Joe C.	"	41	"	Ashton	"	1	"
Serena	"	34	"	Jessy	"	55	"
Celia	"	14	"	Rolla	"	60	"
February	"	19	"	Clarissa	"	35	"
William	"	6	"	Henrietta	"	25	"
Dan.	"	3	"	Melissa	"	3	"
Lucinda	"	7	"	Jim W.	"	27	"
Winney	"	17	"	Eleanor	"	25	"
Barbara	"	16	"	Caroline	"	5	"

Dempsey	aged	50	yrs.
Winney Old	"	50	"
James	"	39	"
Duncan	"	12	"
1110 Peter	aged	11	yrs.
Van	"	7	"
Mary Ann	"	6	"
Alfred	"	26	"
Velia	"	2	"
Preston	"	5	"
Sarah	"	40	"
Anthony	"	35	"
Ellen	"	34	"
Laura	"	28	"
Kenyon	"	6	"
Battle	"	55	"
Mathilda	"	40	"
Malinda	"	29	"
Jefferson	"	7	"
Squire	"	38	"
Zilpha	"	38	"
Nelson	"	55	"
Clara	"	50	"
Eliza	"	40	"
William	"	20	"
Eli	"	8	"
Isaac	"	9	"
Amelia	"	80	"
Jack	"	80	"
Jane	"	10	"
Andrew	"	25	"
Lewis	"	55	"
Margaret	"	45	"
Ellick	"	22	"
John	"	20	"
Ataline	"	26	"

1111 & 1112

Homer	aged	25	yrs.
Hamilton	"	14	"
Rachel	"	8	"
Lewis	"	6	"
Francis	"	5	"
Nicholas	"	65	"
Rosanna	"	30	"
Patrick	aged	45	yrs.
Elizabeth	"	29	"
Mack	"	15	"
Priscilla Ann	"	11	"
Dennis	aged	9	yrs.
Bailey	"	41	"
Fenton	"	12	"
Caroline	"	6	"
Ananias	"	4	"
Wilson	"	2	"
Moses	"	55	"
Sophia	"	40	"
Elsy	"	10	"
Charity	"	5	"
Vizey	"	4	"
Maria	"	3	"
Barton	"	45	"
Solomon	"	35	"
Bertha	"	40	"
Margaret	"	38	"
Rosa	"	16	"
Jim D.	"	15	"
Sally	"	12	"
Summerfield	"	10	"
Dangerfield	"	5	"
Mona	"	3	"
Silas	"	2	"
Harriet	"	48	"
Old John	"	65	"
Abraham	"	22	"
Adam	"	15	"
Armstead	"	35	"
H'y Holliday	"	35	"
Old Jack	"	65	"
Eliza B.	"	50	"
Lucinda	"	7	"
Emeline	aged	7	yrs.
Betsy	"	40	"
Ephraim	"	15	"
Mary	"	8	"
Cornelius	"	21	"
Washington	"	12	"

And all present and future increase and issue of the said slaves.

He, the said Stephen Duncan Linton, promising and bounding himself not to sell, alienate, or encumber the said plantation and slaves or any part thereof to the prejudice of this mortgage.

And he moreover consents and agrees that any and all legal pro-

ceedings for recovery of the amount of the indebtedness herein before acknowledged and declared and for the foreclosure of this mortgage may be instituted and carried to final judgment and execution in any of the district courts of New Orleans or other court of competent jurisdiction in the said city, hereby waiving and renouncing the benefit of any and all laws, present and future, providing that defendants
can only be sued or proceeded against before the judge of the
1113 parish or district wherein they reside or have their domicile.

By reference to the annexed certificate of the recorder of the parish of Rapides aforesaid it will appear that the said plantation and slaves are subject to a special mortgage granted by the said Linton in favor of the said firm of W. & D. Urquhart on the second day of April last past to secure the payment of sixty-six thousand dollars.

And here the said Urquhart declared that in the name of his said firm he dispenses with the production of a certificate from the said recorder to show the mortgages now existing on the said plantation and slaves, and of one from the recorder of the parish of East Baton Rouge, in which the said Linton resides, to show the mortgages, if any, against the said slaves recorded in that parish and to be annexed to this act as required by law, the said Linton binding himself to cause this act to be duly recorded and to furnish the certificates above mentioned to the undersigned notary as soon as possible.

And in order more fully to secure the payments of said
1114 promissory notes at maturity and to provide the means therefor the said Linton moreover declared that he does, by these presents, pledge unto the said firm of W. & D. Urquhart all the crops that shall be raised and gathered on said plantation during the existence of this mortgage; and, in consequence of this pledge and in order to carry the same into full force and effect, he binds himself and his heirs to consign and ship all the said crops to the said W. & D. Urquhart for sale in this city, it being well understood and agreed that the said firm shall be entitled to the usual mercantile commissions, charges, &c., upon all crops which shall or may be sold by them by virtue of this pledge and agreement.

And now to these presents personally came and appeared Madam Mary Perkins, of lawful age, wife of the said Stephen Duncan Linton, who, after having taken cognizance of the foregoing act, which I, the said notary, carefully read and explained to her, declared and said that she approves and ratifies the same; and, further, that it is
her wish and intention to release in favor of the said mort-
1115 gage-s the plantation, &c., herein described from the matrimonial, dotal, paraphernal, and other rights, and from any claims, mortgages, or privileges to which she may be entitled, whether by virtue of her marriage with her said husband or otherwise.

Whereupon I, the said notary, did inform the said Mrs. Linton apart and out of the presence and hearing of her said husband that she had by law a legal mortgage on the property of her said husband—first, for the restitution of her dowry and for the reinvestment of

the dotal property sold by her husband and which she brought in marriage, reckoning from the celebration of the marriage; secondly, for the restitution and reinvestment of the dotal property by her acquired since marriage, whether by succession or donation, from the day the succession was opened or the donation perfected; thirdly, for nuptial presents; fourthly, for debts by her contracted with her said husband, and, fifthly, for the amount of her paraphernal property alienated by her and received by said husband; that in making her intended renunciation she would deprive herself irrevocably and forever of all rights of reclamation against the plan-
1116 tation, slaves, &c., herein described, whether under mortgage, privilege, or otherwise.

And the said Mrs. Linton did thereupon declare unto me, notary, that she was fully aware of and acquainted with the nature and extent of the matrimonial, dotal, paraphernal, and other rights and privileges thus secured to her by law on the property of her said husband, and that she nevertheless did persist in her intention of renouncing not only all the rights, claims, and privileges hereinbefore enumerated and described, but all others of any kind or nature whatever to which — may be entitled by any — now or heretofore in force in the State of Louisiana.

And the said Stephen Duncan Linton being now present, aiding, authorizing the said Mrs. Linton in the execution of these presents, she, the said Mrs. Linton, did again declare that she did, and does hereby, make a formal renunciation and relinquishment of all her said matrimonial, dotal, paraphernal, and other rights, claims, and privileges in favor of the said mortgagees, the said firm of W. & D. Urquhart—

Binding herself and her heirs at all times to sustain and acknowledge the validity of this renunciation.

1117 Done and passed in New Orleans, at my office, the day, month, and year aforesaid, in the presence of John Perkins and Henry Perkins, witnesses, who have signed with the appearers and me, notary, after reading the whole.

(Signed)	MARY LINTON.
Do.	S. DUNCAN LINTON.
"	DAVID URQUHART.
"	J. PERKINS.
"	H. PERKINS.
"	THEO. GUYOL, *Not. Pub.*

I certify the foregoing to be a true copy transcribed from the original act of record on file among the archives of Theodore Guyol, late notary, of whom I am the successor in office.

In faith whereof I grant these presents under my signature and the impress of my seal of office, at New Orleans, this the 7th day of September, A. D. 1866.

(S'g'd) PROSPER CASMUS, *Not. Pub.* [SEAL.]

1118 *Testimony and Notes of Evidence. Filed 1st June, 1867.*

LOUISIANA STATE BANK
vs.
S. D. LINTON.

No. 17703.
4th Dist. Court of New Orleans.

Plaintiff offers—
The eight notes sued on.
The protests thereof.
The act of mortgage, marked "A."
The power of attorney, do. "B."
The record, do. "C."
The document, do. "D."

WILLIAM URQUHART sworn for plaintiff:

I know the signature of the defendant well. The signature and the endorsements on the 8 notes sued on are all genuine.

Document Marked "A." Offered in Evidence by Plaintiff.

Act of mortgage copied. See page No. 6.

1119 *Document Marked "B." Offered in Evidence by Plaintiff. Filed 1st June, 1869.*

Power of attorney.

STATE OF LOUISIANA,
City of New Orleans.

Be it known that on this twenty-third day of November, eighteen hundred and sixty-five, before me, Selim Magner, a notary public, duly commissioned and sworn, in and for the parish of Orleans and the city of New Orleans, personally came and appeared S. Duncan Linton, Esquire, of this city, who declared that he does by these presents make, nominate, constitute, and appoint and in his place and stead depute and put Philip Hickey Morgan, Esquire, of this city, to be his true and lawful attorney-in-fact, giving and granting unto said attorney full power and authority for him and in his name and behalf and to his use to transact all and manage his, this appearer's, affairs, business, and concerns in this city or elsewhere; to lease and let
1120 all or any part of his real estate and receive and receipt for the rent thereof as the same shall fall due; to make all necessary repairs to the real estate of said constituent, pay his taxes, approve of or oppose all assessment tableauxs, effect insurance on his real estate, and for the purposes aforesaid to make and sign all acts of lease, release, contract, compromise, covenant, protest, or otherwise; also to ask, demand, have, take, and by all lawful ways and means to recover and receive of and from all and every person or persons whomsoever, body or bodies corporate, all and every

such sum or sums of money, goods, debts, property, and effects whatsoever as now is or are or may hereafter be in his, her, or their custody or possession, due, owing, coming, or belonging to him, this appearer, whether by bond, bid note, book debt, account, bequest, or otherwise, and to that end with whom it may concern to adjust and settle all accounts, and upon recovery and receipt in the premises to make and sign good and sufficient discharges and acquittances; to appear before all courts of law and equity, and also before all or any military courts, officers, and others, 1121 there to do, prosecute, and defend, as occasion shall demand, or to compromise, compound, and agree in the premises by arbitration or otherwise as said attorney shall think fit; also to apply for and obtain all or any attachments, sequestrations, injunctions, and appeals, give security and sign the necessary bonds, and generally to do and perform, for the full and entire management of his, this appearer's, affairs, all and what shall or may be requisite in as full and ample manner as if herein specially provided for, or as he, this appearer, might, could, or would do if personally present, the said Linton hereby agreeing to ratify and confirm all and whatsoever said attorney shall lawfully do by virtue hereof.

The U. S. internal revenue stamps of one dollar on this act is hereto attached.

Done and passed in my office, at New Orleans aforesaid, on the day, month, and year first before written, in the presence of Edward G. Gottschalk and James Fahey, competent witnesses, who sign these presents with the said appearer and me, notary, after due reading thereof.

(Original signed) S. DUNCAN LINTON.
JAS. FAHEY.
E. G. GOTTSCHALK.
(S'g'd) S. MAGNER, *Not. Pub.*

A true copy.
New Orleans, 28th May, 1867.

S. MAGNER, *Not. Pub.*

1122 *Document Marked "C." Offered in Evidence by Plaintiff. Filed 1st June,* 1867.

30th Avril, 1866.

Timbre Imperial. Qe Expedition No. 4, Je Chambres.

Arant faire droit.

LINTON. C.ᵗ ROLER.

Recu pour droits d'exposition dix francs 13 centimes :

Enregistrement	6.83
Rubes	1.82
Papier de l'exp.	4.50
	13.15

BERTON.

Extrait.

Des minutes et du gœffe du tribunal civil de premiere instance du département de la Seine, séant au palais de justice a la ville de Paris.

Le tribunal civil de premiere instance du département de la Seine, séant au palais de justice à la ville de Paris.

A rendu en l'audience de la chambre du conseil de la première chambre, du dit tribunal civil de premiere instance du département de la Seine, séant au palais de justice a Paris.

1123 Le jugement dont la teneur suit audience du lundi trente avril mil huit cents soixante six.

Le tribunal réuni en la chambre du conseil.

Vu premierement la requête presentée par la Dame Linton, femme de Mr. Stephen Duncan Linton, signee cessehin.

Avonée et dont la teneur suit.

A messieurs les presidents et juges la du conseil du tribunal civil de premiere instance de la Seine, séant au palais de justice á Paris.

Madame Marie Perkins, épouse du Sieur Stephen Duncan Linton, demeurant a Paris, Rue de Civole, numéro dix Sept., Ayant pour Aronée Maitre Cessehin.

A l'honneur de vous exposer que le Sieur Stephen Linton, son mari est actuellement placé dans la maison de Santé du Docteur Blanche à Paris Passy. Qu'il est atteint de deuxieme avec hallucination et acces de furour, est qu'il est absolument incapable dé s'occuper de l'administration de ses biens.

1124 Que ses la le cas confermement à l'article trente deux de la loi du trente Juin, mil huit cent trente deux de pouvoir de dit Sieur Linton d'un administrateur, a ses biens.

Que sur la demande de l'exposante un conseil de famille s'est réuni sons la presidence de Monsieur le Juge de Paix du Neuvieme, arrondissement de la Ville de Paris a décidé, à la date Dix Mars, dernier qu'il y avait lieu par le Tribunal de Nommer un administrateur aux biens du sus-nommé.

Qu'il y a urgence, qu'il y a en outre lieu d'autoriser l'exposante à renoncer à la succession de Monsieur Perkins san père en fin d'autoriser la dîte Dame à etes en Justice.

Nommer telles personne qu'il plaira au Tribunal Confirmément a l'article Trente-deux de la loi du Trente-Juin, Mil Huit cent Trente Deux comme administrateur des biens du Sieur Linton avec les pouvoirs nécessaires pour géven et administrer ses dites biens, et d'antoriser l'exposante a renoncer à la succession de Monsieur Perkins son père et du sera Justice, Est d'a'mi signé sur et en pareil en droit de la minute des presentes.

(Signé) CESSELIN.

1125 Deuxiement l'ordonnance de Monsieur le President portant.

Nous Presidents vu la présente requête et les prieres produites a l'appuie soit communiquée a Monsieur le Procureur Imperial pour

sur ses conclusions est sur le rapport qui sera fait par Monsieur Delange, Juge en se Tribunal que nous commettrons, a cet effet être par le Tribunal Statué ce que de droit.

Fait au Palais de Justice à Paris le Seize Avril Mil Huit Cent Soixante Six.

Est d'ainsi signé sur et en pareil endroit de la minute des presentes.

(Signé) MILLET.

Troisièmement les conclusions due ministre public ainsi conçues.

Le Procureur Imperial vu la presente requête et les prières a l'appui declare ne pas s'opposer.

Au parquet le 24 Avril Mil Huit Cent Soixante Six.

Est ainsi Signé Sur et en pareil au droit de la minute des presentes Sieur le Procureur Imperial le Sus Cestitut déléquè.

(Signé) SEVEITRE.

Quatriemement et les prières produites.

1126 Oui, Monsieur Delange, juge en son rapport et aprés en ayoir delibéré conformement à la loi jugeant en dernier ressort.

Attendu que Linton est retenu comme aliéné dans la maison de santé du Docteur Blanche á Paris, Passy, que dans ces circonstances il y a lien de pourvoir á l'administration de ses biens et affaires.

Que le conseil de famille a éuni un avis en ce seuls. Nomme la dame Linton administratice provisaire des biens et affaires du Sieur Son Mari.

Et attendu qu'a raison de l'impossibilité ou se trouve son Mari de lui conférer des autorisations nécessaires il y a lieu par le tribunal d'autorizer la damme Linton à renoncer purement et simplement à la succession du Sieur Perkins son père et signé toutes actes et déclarations.

Fait et jugé en l'audience de la chambre du conseil de la premiere chambre du tribunal civil de première instance du Département de la Seine, séant en Palais de Justice a Paris.

Par Monsieur Delesseaux, juge faisant de president.

1127 Et Messieurs Chiéblin, chevalier de l'ordre imperial de la Légion d'honneur, Delange et Magner, judges. En présence de Monsieur Severtre substitut de Monsieur le Procureur, Impérial assistés des ayen Goeffiers.

La minute est signée par Monsieur le President le Juge, Rapporteur, et le Greffier.

En marge est écrit Enrégistré à Paris le Sept. Mai Mil Huit cent soixante Sept, folio cents vingt et un case Sept, recu cinq francs soixante quinze centimes.

Sixiemes confrères.

(Signé) DU VERNIONT,
Our Deuxiéme Expédition.

(Signé) LENOTS.

Calletonnier.
Vu pour légalisation de la signature de Mr. Lènot.
Cette piéce par nous pour l'empéche de Mr. le Président du Tribunal de 7^m^ Justice de la Seine. Paris le 26 Avril, 1867.

Document Marked "D." Offered in Evidence by Plaintiff. Filed 1st June, 1867.

1128 Pardevant moi, André Marc Scheleher, et son Collegue, notaire à Paris sons signees A comparu.
Mme. Marie Perkins, sans profession demeurante à Paris, rue St. Jean Baptiste No. 5, Epouse de Mr. Stephen Duncan Linton sans domicile ni residence comme, Laquelle a par les présente declaré renoncer purement et simplement a la succession de Mr. Jehu Perkins Docteur Médicen de la Nouvelle Orléans, Amérique, décédé à Liverpool, Angletérre, au moi de Juin Mil Huit Cent Soixante Cinq dont elle est habile a le dire et porté héritière pour partie, ainsi qu'elle déclare.
Donnant tous pouvoirs au porteur de présenter et de reite ras partout ou besoin sera, la présente renonciation et de faire à cet effet et toutes affirmation requise.
Voulant et entendant formellement la comparante être considérée comme n'étant point appelée a Eccueillir la d Succession.
Mention des présentes, et consent partont ou besoin sera.

Dont acte.

1129 Faites et passée à Paris en l'étude de Mr. Scheler, rue Liputtière, No. 18 L'an Mil Huit Cent Soixante Six, le Neuf Mai.
Lecture faite la comparante à signé avec Mr. le notaire.
Bardoux.
(S'g'd) MARY PERKINS.
SCHELCHER.

Enrégistre à Paris 3me Bureau le Ouze, Mai, 1866, fo. 83, vol. S.
Recu deux francs et 30 centimes, pour decame et deure.
(S'g'd) ROB'T MICHEL.

Vu par nous Juges du Tribunal civil de prémier Instance de la Seine, pour l'égalisation de la signature de Mr. Schelcher et Mr. Bardoux.
Paris le Ouze Mai, 1866, par Mr. le Président empeche A. Nicholas pour l'égalisation de la signature de Mr. Nicholas posé ci dessus Paris, le 12'' Mai, 1866.
Par delégation du Gardes des Heaux, Ministres de la Justice et des Caltes.
[SEAL.] Le Chef du Bureau :
CH. MAN.

Le Ministre des affaires étrangères certifie, certifie veritable la signature.
Paris, le 12 Mai, 1866.

Pour autorisation du Ministre, le sons directeur chef de la
1130 chancellerie.

[Ministre des affaires etrangères.]

DUBOIS.

[United States Consulate.]

Seal and signature of foreign office duly legalized at this consulate.

Paris, the 12th day of May, 1866.

No. 9413. R'c'd $2.00.

(S'g'd) G. NICHOLAY,
U. S. Consul.

[Timbre Imperial.]

9 May, 1866.

Renonciation par M'me Perkins à la succession de son pére.

[SEAL EAGLE.]

La dite dame autorisée a l'èffet des presentes par jugements de la chambre du consent du Tribunal Civil première Instance de la Seine, du 30 Avril dernier enrégistré ainsi que la constate, un certificat délivre par Mr. Esselin aroné a Paris non registrè mais quì le sera avec les présentes est demeuré ci annexé.

P.

D'un jugement rendu par la chambre du tribunal civil de première Instance de la Seine le 30 Avril, 1866, enrégistré le Sept., Mai, suivant fo. 121, Co. 8, par le receveur, qui á reçu 5 francs 75 centimes.

1131 Rapport.

Que la dame Linton (Mary Perkins) épouse de Sr. Stephen Duncan Linton, à été nomînée administratice provisiones des biens et effaires du Sr. Son Mari, et que la dite dame, à été autorisée à renoncèr purement et simplement à la succession du Sr. Perkins Son pére et à signer tous actes et déclaration á ce necessaires.

Dont extrait delivrèe par moi avonée soussigné le neuf Mai, mil huit cent soixante-six.

(S'g'd) N. CESSELIN.

Annexé à la minute de mon acte contenant renonciation signé par nous notaires à Paris soussignés le neuf Mai, mil huit cent soixante-six.

(S'g'd) MARY PERKINS.
" SCHELCHER.
" PARDOUX.

Enrégistré à Paris 3me B^{er} le 11, Mai, 1866, fo 34 de Co. S.
Reçu deux francs et 30^{a} 10^{c}.

(S'g'd) BEN. MICHEL.

Judgment Rendered 1st June, 1867.

LOUISIANA STATE BANK *vs.* STEPHEN DUNCAN LINTON. } No. 17703. 4th Dist. C't of New Orleans.

1132 On motion of Hyams & Jonas, of counsel for plaintiff, and on producing due proof of plaintiff's demand, it is ordered, adjudged, and decreed that the judgement by default herein entered on the 22d ultimo be now confirmed and made final; that plaintiff, The Louisiana State Bank, have and recover of the defendant, Stephen Duncan Linton, the sum of eighty-six thousand six hundred and *eighty-six thousand six hundred and* sixty-six 66⅔-100 dollars, with interest at the rate of eight per cent. per annum until paid on the sums and from the dates following, to wit:

On $10,833⅓ from 13th January, 1862;
On $10,833⅓ " 13th February, 1862;
On $10,833⅓ " 13th March, 1862;
On $10,833⅓ " 18th March, 1862;
On $10,833⅓ " 13th January, 1863;
On $10,833⅓ " 13th February, 1863;
On $10,833⅓ " 13th March, 1863;
On $10,833⅓ " 18th March, 1863,

with $26\frac{33}{100}$ dollars, costs of protest, five per centum on said principal sum & interest as attorney's commission, and all costs of suit, and that plaintiff's mortgage be recognized and enforced on the
1133 property described in the petition and act of mortgage on file in this case.

Judgement rendered 1st June, 1867.
Judgement signed 6th June, 1867.
(Signed) PAUL E. THÈARD, *Judge.*

Certificate of Costs of Sheriff. Filed Dec. 12th, 1867.

LOUISIANA STATE BANK *vs.* STEPHEN DUNCAN LINTON. } No. 17703. 4th Dist. Court, P'sh of Orleans.

Parish of Orleans. No. 17703.

SHERIFF'S OFFICE, PARISH OF ORLEANS.

STATE BANK OF LOUISIANA *vs.* STEPHEN DUNCAN LINTON. } No. 17703.

Fourth District Court of New Orleans.

1134 I do hereby certify that *that* the fees due Harry F. Hays, sheriff, in this case amount to — dollars and forty cents.
Sheriff's office, 22nd day of November, 1867.
(Signed) S. P. KARR, *D'y Sh'ff.*

$0.40.
Received payment,

—— ——, *Sheriff.*

—— ——, *Attorney.*

Motion to Appoint Curator, &c. Filed 27th December, 1867.

LOUISIANA STATE BANK *vs.* STEPHEN DUNCAN LINTON. } No. 17703. Fourth District Court of New Orleans.

On motion of Hyams and Jonas, of counsel for plaintiff, and on showing to the court that they have obtained judgement herein by a confirmation of default, rendered after due and legal service, and on their further showing that since the said service and citation the defendant, who has been interdicted, and his legal represent-
1135 ative, Mrs. Mary Jane Perkins Linton, have both been and are still absent and residing in the Empire of France and are unrepresented in this State, and that it is impossible, therefore, to serve a copy of judgement upon them, it is hereby ordered that A. Robert, Esq., be appointed curator *ad hoc* to represent the said absentees, and upon whom said service shall be made.

(Signed) T., *Judge.*

Sheriff's Return to Motion.

Received December 30th, 1867, and on the same day, month, and year served copy of the within motion and order personally on Mr. A. Robert, curator *ad hoc.*

Returned same day.

Sh'ff's fees, 50c.

(Signed) E. G. ROBERT, *D'y Sh'ff.*

Motion to Fix Fees, &c. Filed 10th Feb'y, 1869.

LOUISIANA STATE BANK *vs.* STEPHEN DUNCAN LINTON. } No. 17703. Fourth District Court, Parish of Orleans.

1136 STATE OF LOUISIANA:

Fourth District Court for the Parish of Orleans.

WEDNESDAY, *the 10th Day of February*, 1869.

Present: The Honorable Paul E. Thèard, judge.

On motion of A. Robert, curator, appointed to represent the absent d'f't in the above-described case, and for the reasons on file, it is ordered by the court that plaintiff do show cause on Friday, the 16th inst., at 10 o'clock a. m., why mover's fees as curator of the absentee should not be fixed by the court & why they should not be paid to

him or, in default of payment, why execution should not issue therefor.

(S'g'd) C. W. CALLAN,
Deputy Clerk.

Sheriff's Return.

Rec'd February 10th, 1869, and on the 11th February, 1869, served copy of the within motion and order on the Louisiana State Bank, through Hyams & Jonas, by personal service on Jonas.

Returned same day.

(S'g'd) A. F. LYND, *D'y Sh'ff.*

1137 *Reasons for Judgement. Filed 16th February*, 1869.

LOUISIANA STATE BANK *vs.* STEPHEN D. LINTON. } No. 17703. Fourth Dist. Court.

On the rule taken by the curator *ad hoc*, the court, having consulted Messrs. F. J. Semmes, J. M. Deirhauer, and F. Gilmore as to the value of the services of said curator, orders that the fees of said curator be fixed at two hundred and fifty dollars, and that the rule be made absolute.

(S'g'd) T., *Judge.*

Judgement on Rule. Rendered 16th Feb'y, 1869.

The rule herein filed by the curator *ad hoc* on the 10th inst. came on this day, A. Robert, in person, Hyams & Jonas for def't in rule, when, for the written reasons assigned, it is ordered that said rule be made absolute; that A. Robert, curator *ad hoc*, be allowed two hundred and fifty dollars for his services herein, to be taxed as costs, and that execution against the plaintiff issue therefor, and for the costs of this rule.

1138 Judgement rendered 16th Feb'y, 1869; signed 20th Feb'y, 1869.

(S'g'd) PAUL E. THÈARD, *Judge.*

Petition. Filed May 11th, 1877.

LOUISIANA STATE BANK *vs.* S. DUNCAN LINTON. } No. 17703. Fourth District Court, Parish of Orleans.

The petition of the State National Bank, a corporation organized under the national banking law of the United States and domiciled in New Orleans, shows, with respects, that your petitioner is the successor of The Louisiana State Bank, the original plaintiff herein, and is the successor to all the rights of the said corporation and charged with the liquidation of the same, and is also the owner of all of its property and assets; that the said Louisiana State Bank

recovered judgement herein against Stephen Duncan Linton for the sum of eighty-six thousand six hundred and sixty-six 66⅔-100
1139 dollars, with 8 per cent. per annum interest on $10,833.33⅓ from January 13th, 1862; on a like amount from February 13th, 1862; on a like amount from March 13th, 1862; on a like amount from March 18th, 1862; on a like amount from January 13th, 1863; on a like amount from Feb'y 13th, 1863; on a like amount from March 13th, 1863, and on a like amount from March 18th, 1863; twenty-six $\frac{2}{100}$ dollars, costs of protest, and 5% on said sum and interest as attorney's commissions and costs of suit; which said judgement was rendered by this honorable court on the 1st day of June, 1867.

Petitioner further shows that in said judgement a special and conventioned mortgage was recognized and declared enforced in favor of your petitioner for the amount of the said judgment upon the following-described real property, situated in the parish of Rapides, in this State, to wit:

A certain plantation, known by the name of Quantico plantation, situated in said parish, on the east side of Bayou Boeuf, and containing about eighteen hundred acres, the said plantation
1140 lying at the mouth of Bayou Robert, about twelve miles from the town of Alexandria, and being bounded on the upper side by the lands of Chambers and on the lower side by L'Esparanza plantation of the late John Linton, deceased, together with the buildings and improvements thereon, the engines, machinery, and apparatus, stock, cattle, horses, mules, farming utensils, & implements of husbandry on the said plantation, the said mortgage thus recognized and declared executory being the one executed by the said S. Duncan Linton in favor of Messrs. W. & D. Urquhart by act passed before Théodore Guyol, a notary public, of this city, on the 27th day of December, 1859, which was given to secure certain notes, on eight of which the judgement herein was rendered.

Petitioner alleges that said mortgage, as well as the judgement rendered herein, are duly recorded in the parish of Rapides, and constitute both a conventional and judicial mortgage on the said Quantico plantation in favor of your petitioner, and that in the said
1141 act of mortgage the said Linton agreed that any and all legal proceedings for the recovery of the amount secured by the same might be instituted before any of the districts courts of the city of New Orleans.

Petitioner shows that since the rendition of the judgement herein the said Stephen Duncan Linton has died and his succession been opened in the parish of Rapides. and is now represented by and administered by James Madison Wells, Jr., the public administrator of said parish.

Petitioner shows that she desires to revive her aforesaid judgement, as provided by section 2813 of the Revised Statutes of this State.

Wherefore, the premises considered, petitioner prays that a citation issue from this honorable court to said Jas. Madison Wells, Jr., public administrator of the parish of Rapides, as such administering and representing the succession of the said late Stephen Duncan

Linton (said citation to be served and returns to be made by the sheriff of said parish of Rapides), citing him to appear and answer this petition, and that after due proceedings had there be
1142 judgement in favor of your petitioner and against the succession of the said Linton reviving the said judgement for the said sum of eighty-six thousand six hundred and sixty-six 66⅔-100 dolls., with interest as aforesaid, 5% attorney's commissions, twenty-six $\frac{20}{100}$ dollars, costs of protest, and costs of court, and recognizing and enforcing the said mortgage as above set forth on the said "Quantico plantation" in favor of your petitioner; and petitioner prays for all further general and equitable relief.

(S'g'd) B. F. JONAS, *Attorney.*

Citation. Issued 11th May, 1877.

LOUISIANA STATE BANK, STATE NAT'L B'K, Succ., *vs.* S. DUNCAN LINTON. — No. 17703. 4th Dist. C't, Parish of Orleans.

STATE OF LOUISIANA:

Fourth District Court for the Parish of Orleans, in the City of New Orleans. No. 17703.

Mr. James Madison Wells, Jr., public administrator of the parish of Rapides, & as such administering and representing the succession of the late S. Duncan Linton:

You are hereby summoned to comply with the demand
1143 contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the fourth district court for the parish of Orleans, on Chartres St. between St. Anne and St. Anthony alley, in ten days after the service hereof.

Witness the Honorable William P. Houston, judge of the said court, this 11th day of May, in the year of our Lord 1877.

(Signed) THOMAS HANLEY, *Deputy Clerk.*

Sheriff's Return.

Received on the 15th May, 1877, and on the 16th day of May, A. D. 1877, I made service of the copies of petition and citation within mentioned on J. Madison Wells, Jr., public adm'r, &c., at the usual place of domicil or residence of said J. Madison Wells, Jr., situated in the parish of Rapides, about thirteen miles from the court-house of said parish, by delivering them to a person over the age of 14 years, whose name was J. Madison Wells' Serr, and who was at the time living at the house of J. Madison Wells, Jr., he being absent at time — service, as ascertained.

(Signed) JOEL J. NEAL, *D'y Sh'ff.*

Fee ($2.00).

1144 *Judgement. Rendered November*, 1877.

LOUISIANA STATE BANK, &c., *vs.* S. DUNCAN LINTON. } No. 17703. Fourth District Court, Parish of Orleans.

On motion of B. F. Jonas, of counsel for plaintiff, and on furnishing due proof of plaintiff's demand, and the law and evidence being in favor of the same—

It is ordered, adjudged, and decreed that the judgement by default herein entered on the 6th day of November, 1877, be now confirmed and made final, and accordingly that there be judgement in favor of plaintiff, The Louisiana State Bank, State National Bank, &c., successor, and against def't, Stephen Duncan Linton, reviving the judgement rendered on the first day of June, 1867, in the suit entitled Louisiana State Bank *vs.* Stephen D. Linton, being No. 17703 of the docket of this court, for the sum eighty-six thousand six hundred and sixty-six 66⅔-100 dollars, with interest at the rate of eight per cent. per annum until paid on the sums and from the dates following, to wit:

On $10,833⅓ from 13th January, 1862;
On $10,833⅓ from 13th February, 1862;
On $10,833⅓ from 13th March, 1862;
On $10,833⅓ from 18th March, 1862;
1145 On $10,833⅓ from 13th January, 1863;
On $10,833⅓ from 13th February, 1863;
On $10,833⅓ from 13th March, 1863;
On $10,833⅓ from 18th March, 1863,

with twenty-six $\frac{20}{100}$ dollars, costs of protest, five per centum on said principal sum and interest as attorney's commission, and all costs of suit, and that plaintiff's mortgage be recognized and enforced on the property described in the petition and act of mortgage on file in this case.

Judgement signed December 7th, 1877.

(S'g'd) W. T. HOUSTON,
Judge Fourth District Court.

Motion for New Trial. Filed November 13th, 1877.

LOUISIANA STATE BANK, &c., *vs.* STEPHEN DUNCAN LINTON. } No. 17703. Fourth Dis't Court, Parish of Orleans.

On motion of Charles M. Emerson, of counsel for Mrs. Marie P. Evans, wife of Wm. R. Evans, now temporarily residing in New Orleans, in said parish, herein aided and authorized by her said husband, and on suggesting that the said Mrs. Evans, late
1146 widow of said S. Duncan Linton, was by his last will made and instituted sole heir to all his estate, and as such, in the month of July, 1875, or thereabouts, was duly recognized as such

heir by the court of probates of the parish of Rapides, being the parish court for said parish, and ordered to be put in possession of the property of said succession, a portion of which is the property described in said plaintiff's petition; on further suggesting that a petition to revive the judgement herein rendered in June, 1867, was filed in that court on the 11th of May, 1877, and served with citation on or about the 16th May, 1877, upon one James Madison Wells, Jr., as public administrator for said parish of Rapides; and on further suggesting that at the time of said service the said Wells was not the public administrator of the parish of Rapides, and in no manner or extent legally represented said succession, and was not the legal representative of the succession of S. Duncan Linton; and on further suggesting that no legal service of citation has been made in this suit to revive, and that the judgement by default
1147 herein rendered is null & void; and on suggesting further that the original judgement which these proceedings seeks to revive is of absolute nullity and of no binding force and effect, inasmuch as the suit upon which said original judgement was rendered was instituted in the parish of Orleans, while the domicil of said S. Duncan Linton was then, and for a long time had been, in said parish of Rapides—

It is ordered that plaintiff show cause on Friday, the 30th day of November, 1877, at 11 o'clock a. m., why the said judgement for revival should not be rescinded and a new trial granted.

Sheriff's Return to Rule.

LOUISIANA STATE BANK, STATE NATIONAL, &c., *vs.* STEPHEN DUNCAN LINTON.	No. 17703. Fourth District Court, Parish of Orleans.

Received November 16th, 1877, and on November 17th, 1877, served a copy of the within rule on plaintiff, State National Bank, through Samuel H. Kennedy, in person.

Sh'ff's fee, 50c.

(Signed) WM. J. GRADY, *D'y Sheriff.*

1148 STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

I, W. G. McGeehan, clerk of the civil district court for the parish of Orleans, do hereby certify that the foregoing forty-seven pages do contain a true, correct, and complete transcript of all the proceedings had, documents filed, and evidence adduced in the cause wherein The Louisiana State Bank, The State National Bank, successor, is plaintiff and Stephen Duncan Linton is defendant, instituted in the late fourth district court for the parish of Orleans under the No. 17703 of the docket thereof and duly transferred by operation of law to the aforesaid civil district court for the parish of Orleans under the No. 11572 of the docket thereof.

[SEAL.] In testimony whereof I have hereunto set my *seal* and affixed the seal of this court on this 9th day of June, in the year of our Lord *A. D.* 1884.

W. J. McGEEHAN,
Clerk Civil Dist. Court.

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1149 United States Circuit Court for the Eastern District of Louisiana.

MARIE P. EVANS *et als.*
vs.
DAVID URQUHART *et als.* } No. 7672.

Offered in evidence by The State National Bank, one of the defendants, December 15th, 1884.

F. A. WOOLFLEY,
Special Examiner.

1150 THE STATE OF LOUISIANA:

Probate Court, Parish of Rapides.

Succession of STEPHEN DUNCAN LINTON.

"*Transcript of Record.*" *No.* 248.

1151 Transcript. No. 248.

District Court.

STATE OF LOUISIANA, }
Parish of Rapides. }

Succession of STEPHEN DUNCAN LINTON.

Probate of will.

Petition.

To the honorable parish judge of Rapides parish, State of Louisiana:

The petition of Henry Perkins, of the parish of West Feliciana, State of Louisiana, respectfully shows to the court that S. Duncan Linton, late of the parish of Rapides, State aforesaid, died in the Empire of France on or about December —, A. D. 1867, leaving an olographic will, executed by him on the 19th day of December, A. D. 1863, in Matamoras, Mexico, by which he donated all of his property to his wife, Mary Linton, leaving her his universal heir and legatee. Petitioner shows that the parish of Rapides was the domicil of S. Duncan Linton before leaving for France, and that
1152 his succession has been opened and is being administered by the public administrator of your said parish under the orders of your said court.

Petitioner shows that the said Linton left no forced heirs, but that Thomas C. Manning, Esq., is the attorney-in-fact of the sisters of the said Linton, deceased. Wherefore he prays that said will, which is annexed to and made part hereof, be probated after due proff according to law, and notice of the time of said probating be given to Thomas C. Manning, att'y-in-fact of the sisters and apparant heirs of said Linton, who are now residing in France, and after due proceedings had the will aforesaid be probated and declared the last will and testament of said S. Duncan Linton, deceased, for all orders necessary, for all cost, &c., and that the same be declared executory.

W. F. BLACKMAN, *Att'y.*

Parish court, parish of Rapides, La.
Filed May 25th, 1875.

CHAS. OWENS, *D'y Clerk.*

Order.

The foregoing affidavit of the death of S. Duncan Linton,
1153 testator, being considered together with the petition of Henry Perkins, it is ordered that the will be proved on Tuesday, at — o'clock, in the clerk's office, at the court-house, in the town of Alexandria, parish of Rapides, the 25th day of May, 1875, according to the forms of law. It is further ordered that Thomas C. Manning, attorney of the sisters and brother of the deceased, have due notice hereof.

This done in chambers this the 25th day of May, 1875.

H. L. DAIGRE,
Parish Judge.

Will.

MATAMORAS, *December 19th*, 1863.

I, S. Duncan Linton, being in sound mind, do hereby declare my wife, Mary Linton, is my sole and exclusive inheirator of any property that I may have at the time of my death.

S. DUNCAN LINTON.

[Written across the face:] Paraphed *N. varietur* by me this 25th May, 1875. H. L. Daigre, par. judge. Paraphed *N. varietur* by me this 25th May, 1875. H. L. Daigre, parish judge.

Parish court, parish Rapides, La.
Filed May 25th, 1875.

CHAS. OWENS, *D'y Clerk.*

1154 *Process Verbal of Opening and Proving Will, and Affidavit of Mrs. Julietta Perkins.*

In the Matter of the Succession of S. DUNCAN LINTON, Dec's'd.

Parish Court, Parish of Rapides, State of Louisiana.

Process verbal of the opening and proving of the last will and testament of Stephen Duncan Linton, deceased.

On this 25th day of May, A. D. 1875, in obedience to an order issued by me, personally came and appeared before me Mrs. Julietta Perkins, who, being by me first duly sworn, says she was present when Stephen Duncan Linton died. He died in Paris, France, in the month of December, 1866; that the instrument herewith filed, dated Matamoras, December 19th, 1863, is the last will and testament of the deceased, S. Duncan Linton; it is entirely written, dated, and signed by the hand of the testator. I know this fact, because I know his handwriting, having often seen him write and sign his name. He was my son-in-law and lived with me in the same house for many years before his death. The deceased left no forced heirs.

JULIETTA PERKINS.

Sworn and subscribed to before me this 25th day of May, A. D, 1875.

H. L. DAIGRE,
Parish Judge.

1155 *Affidavit — Dr. Henry Perkins.*

Dr. Henry Perkins, being duly sworn, says that he knows the deceased, S. Duncan Linton, intimately. He was his nephew by marriage. He is dead. He died in Paris, France, about the month of December, 1866. The instrument on file, dated Matamoras, December, 19th, 1863, is the last will and testament of the deceased, Stephen Duncan Linton. I know this fact, because I am well acquainted with his handwriting, having often seen him write and sign his name. The deceased left no forced heirs, his father and mother having been dead many years, and he left no children. Mary Linton, his wife, is still living.

H. PERKINS.

Sworn & subscribed before me this 25th day of May, 1875.

H. L. DAIGRE,
Parish Judge.

Affidavit of John D. Osborne.

John D. Osborne, being duly sworn, says: I was well acquainted with the deceased, S. Duncan Linton; that the instrument shown to him is wholly written, dated, and signed by the hand-
1156 writing of the deceased, S. Duncan Linton. I know this fact from being fam-iar with his handwriting.

J. D. OSBORNE.

Sworn & subscribed to before me this 25th day of May, 1875.

——.

Order.

Will executed and recorded.

Parish Court, Parish of Rapides, State of Louisiana.

Be it remembered that on this the 25th day of May, A. D. 1875, personally came before me Dr. Henry Perkins and presented an instrument purporting to be the last will and testament of S. Duncan Linton, *deaced*, being of olographic form. I proceeded to open the same, which was not under seal.

At the same time came and appeared Mrs. Julietta Perkins, Henry Perkins, and John D. Osborne, witnesses to prove the last will & testament of the deceased. All of the aforesaid witnesses having been duly and separately sworn to tell the truth, the whole truth, and nothing but the truth, their declarations were separately taken down, sworn by me, and subscribed to in my presence. I
1157 then proceeded to read the will in an audible and distinct voice to the witnesses and other persons present, after which

I paraphed the will *ne varietur* at the top or beginning and end of the page. I then ordered the will executed and recorded and deposited the same in my office.

Thus done in chambers this 25th day of May, A. D. 1875.

H. L. DAIGER,
Parish Judge.

Order.

In this matter of the succession of Stephen Duncan Linton, parish court, parish of Rapides, the foregoing petition and testimony of witnesses being considered, together with instrument on file purporting to be the last will and testament of S. Duncan Linton, deceased, it is ordered that the same be executed and recorded and deposited in my office, it having already been paraphed *ne varietur* at the beginning and end of each page.

This done in chambers this 25th day of May, 1875.

H. L. DAIGER,
Parish Judge.

1158 Parish court, parish of Rapides, Louisiana.
Filed May 25th, 1875.

CHAS. OWENS, *D'y Cl'rk.*

Petition and Order to Take Inventory.

To the honl. the judge of Rapides parish, State of Louisiana:

The petition of Mary Linton, wife of William R. Evans, of the city of Philadelphia, State of Pennsylvania, respectfully shows that, some time in the month of May last, the last will and testament of Stephen Duncan Linton was probated by your honor and declared and decreed to be executtory. Petitioner shows that she is the universal legatee and sole heir instituted by the said last will and testament of the said S. D. Linton, deceased. Petitioner prays that an order be granted and commission issued to —— ——, notary public, to make and take an inventory of said succession for all orders necessary for costs, &c.

W. F. BLACKMAN, *Att'y.*

1159 *Affidavit of W. F. Blackman.*

Personally came and appeared before me, the undersigned authority, W. F. Blackman, attorney of record, who, being duly sworn, deposes and says that H. L. Daiger, parish judge, is absent from this parish.

W. F. BLACKMAN.

Sworn and subscribed before me this the 5th June, 1875.

W. W. WORTHINGTON,
Justice of Peace.

Parish court, parish of Rapides, La.
Filed July 5th, 1875.

CHAS. OWENS,
Deputy Clerk.

Order.

Let the prayer of the petitioner be granted and commissions issue to L. V. Marye, notary public, to make an- take an inventory of the succession of S. D. Linton.

Thus done, read, and signed this the 5th day of June, A. D. 1875.

J. OSBORNE,
District Judge.

1160 *Commission to L. V. Mayre, Notary Public, to Take Inventory.*

Successions of STEPHEN DUNCAN LINTON. No. 248.

The State of Louisiana, parish court, parish of Rapides, to L. V. Marye, notary public in and for the parish of Rapides, Greeting:

You are hereby authorized and empowered to take an inventory and appraisement of the property, real and personal, rights, credits, and effects belonging to the estate of Stephen Duncan Linton, late of said parish and State, and when you have so done you will make return thereof to our said court according to law.

Given under my hand and seal of office as deputy clerk of said — this the 5th day of July, A. D. 1875.

[L. S.] CHAR'S OWENS, *D'y Clerk.*

1161 *Inventory.*

Succession of STEPHEN DUNCAN LINTON. No. 248.

STATE of LOUISIANA, }
Parish of Rapides. }

Be it known that on this 14th day of August, A. D. eighteen hundred and seventy-five, pursuance to a commission from the honl. the parish court, had holding sessions in and for the parish of Rapides and State of Louisiana, the same to me directed and hereto annexed, authorizing and empowering me to take an inventory and appraisement of the property, real — personal, rights, credits, and effects belonging to the succession of Stephen Duncan Linton, late of this parish, deceased—

I, Louis V. Marye, a notary public in and for the parish of Rapides and State of Louisiana, duly commissioned and qualified according to law, proceeded to take the said inventory in the manner and form as follows, to wit: Messrs. John Clements and James R. Andrews being duly appointed appraisers, I, notary, administered to them the oath required by law as follows, to wit:

Oath.

1162 We, the undersigned appraisers, do solemnly swear that we will and truly and to the best of our knowledge and understanding value the property, real and personal, rights, credits, and effects belonging to the succession of Stephen Duncan Linton, deceased, so help us God.

JOHN CLEMENTS.
JOHN R. ANDREWS.

Sworn & subscribed to before me this the 14th day of August, A. D. 1875.

L. V. MARYE,
Notary Public.

The two competent witnesses were Messrs. John M. Barrett and J. C. French, and in their presence I made the following inventory:

All the right, title, and interest now pending on appeal before the supreme court of the State of Louisiana in and to a certain tract of land situated in Rapides parish, State of Louisiana, and known as the Quantico plantation, being about twelve miles from the town of Alexandria, on the east side of Bayou Boeuf, and containing the quantity of eighteen hundred acres of land, together with all the buildings and improvements thereon. The Quantico plantation is appraised at eighteen thousand dollars, $18,000.00.

1163 We know nothing as regards the interest of the succession.

There being nothing more to enter herein, I close the same.

In testimony whereof the appraisers and witnesses aforesaid have signed their names, together with me, notary, on the day and date first above written.

JOHN CLEMENTS.
JOHN R. ANDREWS.

Witnesses:
JOHN M. BARRATT.
J. C. FRENCH.

[L. S.]

L. V. MARYE,
Notary Public.

Filed August 16th, 1875.

CHAS. OWENS, *D'y Clerk.*

Petition of W. F. Blackman, Att'y.

Appointment of dative testamentary executrix unnecessary.

To the honorable the parish judge of Rapides parish, State of Louisiana:

The petitioner, Marie Linton, wife of William R. Evans, of the city of Philadelphia, State of Pennsylvania, who joins in for the purpose — aiding and authorizing, with respect shows that

1164 some time since the last will and testament of Stephen Duncan Linton was probated by your honor and made executory.

P't'r shows that by the provisions of said testament that she as the wife was made the universal legatee and sole heir of her deceased husband's estate. Petitioner shows that there is not at present any property belonging to the said succession; but suits are now pending for the recovery of the property belonging to the same, and it is necessary to institute suits in various courts of the State for the interest of said succession. Petitioner further shows that the appointment of a dative testamentary executrix is unnecessary, as there is not property or effects to administer, and it is unnecessary to burden the succession with costs. P't'r shows that she is universal legatee, purely and simply; wherefore she prays to be recognized as universal legatee under the testament aforesaid, and that she be placed in possession of the effects, rights, and credits of said succession as such.

W. F. BLACKMAN, *Att'y.*

Parish court, parish of Rapides, La.
Filed July 13th, 1875.

CHAS. OWNES,
Dep'y Clerk.

1165 *Order.*

Let Marie Linton, petitioner, duly authorized by her husband, be recognized as universal legatee of Stephen Duncan Linton, deceased, and it is ordered that she, as universal legatee and sole heir, be placed in possession of the effects, rights, and credits of the succession of her deceased husband, S. D. Linton, as prayed for in the foregoing petition. This done and signed this the 13th day of July, A. D. 1875.

H. L. DAIGER,
Parish Judge.

Filed July 13th, 1875.

CHAS. OWENS,
Dep'y Clerk.

Petition of R. J. Bowman, Att'y for J. M. Wells, Jr., Administrator.

To the hon. the judge of the parish of Rapides:

The petition of J. M. Wells, Jr., in his capacity of administrator of the succession of S. D. Linton, respectfully represents that recently, viz., that on or about the 25th of May, 1875, there was pro-
1166 bated before your hon. court what porparts to be the will of S. D. Linton, and which is recognized by this hon. court — the last will & testament of the said Linton making Mary Linton, his wife, his sole heir; that the said Mary Linton and her husband, William R. Evans, claiming her- to be the universal legatee of said Linton in virtue of said will, has obtained from your hon. court an *ex partee* order ordering her to be put in possession of said estate of said Linton.

Petitioner alleges that the said Linton died in France in Dec., 1867, and said will has remained in possession of said Mary Linton until recently without any effort to probate the same; that said successor of Linton remained without any representative until 1871, when the public administrator was appointed administrator and has been administrating said succession since said appointment; that said succession is so largely in debt as to be insolvent and an administrator is absolutely necessary to protect the interest of the creditors, and their interest cannot be disposed of by said will or by any *ex partee* order ordering the said legatee to be put in possession of said estate.

Petitioner furthe- represents that the said legatee has made
1167 no attempt to have said will executed by provoking the appointment of a dative testamentary executor, but has obtained the said *ex partee* order. Petitioner represents that said order issued illegally for the following reasons, viz: Because a decree ordering the universal legatee to be put in possession of the effects of the succession can only be legally rendered when done cont-adictorily with the executor or administrator representing the succession, and the pretended decree rendered in the said succession as aforesaid is virtual-y a judgment rendered without citation and is an absolute nullity; 2nd, because neither the legal or testamentary heir has any right to any portion of the succession under the administration of an administrator until the debts are paid and a final settlement, and then only for the residue, and until then has no right to interfere with said succession. Petitioner further represents that said Mary Linton is now the wife of William R. Evans and with him a resident of the city of Philadelphia.

Wherefore petitioner prays that a *curator ad hoc* be appointed to represent said absentee, and that the said Mary Evans and
1168 her husband be duly cited to answer the petition, and, after due proceedings, the said decree of your hon. court ordering Mary Evans to be placed in possession of the property of said succession of S. D. Linton be declared null & void, and for costs & general relief.

R. J. BOWMAN,
Att'y for Petitioner.

Parish court, parish of Rapides, La.
Filed July 20th, 1875.

CHAS. OWNES,
Dep'y Clerk.

Order.

The foregoing petition being considered, it is therefore ordered that W. F. Blackman, *being* appointed *to* curator *ad hoc* to represent the said Mary Evans and her husband, W. R. Evans.

July 28th, 1875.

H. L. DAIGER,
Parish Judge.

Service accepted of appointment.

W. F. BLACKMAN,
Of Curator ad hoc.

Citation to W. F. Blackman.

STATE OF LOUISIANA, }
Parish of Rapides. }

To W. F. Blackman, of parish of Rapides, curator *ad hoc*, representing Mary Evans and her husband, W. R. Evans:

Succession of STEPHEN DUNCAN LINTON. No. 248.

1169 Probate will.

You are hereby cited to appear in the office of the clerk of the said court, in the town of Alexandria, in the parish aforesaid, and comply with the demands contained in the petition of J. M. Wells, Jr., public administrator and administrator succession S. D. Linton, of which a copy accompanies this citation, or return your answer thereto in writing in said office in ten (10) days after the service hereof, with an additional day for every ten miles between your residence and the office of the said clerk.

[L. S.] Witness the Honorable H. L. Daigre, judge of said court, this the 4th day of August, A. D. 1875.

CHAS. OWENS, *D'y Clerk.*

The above citation, with a certified copy thereof and of the petition*er*, were received by the sheriff of the parish of Rapides 4th day of August, A. D. 1875.

D. C. PAUL, *Sheriff.*

Personal Service.

On the 4th day of August, A. D. 1875, I made service of the copies of petition and citation above mentioned by delivering them to W. F. Blackman in person.

D. C. PAUL, *Sheriff.*

1170 Parish Court, Parish of Rapides, La.

Returned and filed August 6th, 1875.

CHAS. OWNES,
Deputy Clerk.

Answer.

J. M. WELLS, Administrator,
vs.
MARIE EVANS. } No. 248.

Now comes the deponent, and for answer files a general denial.

W. F. BLACKMAN,
Curator ad hoc.

Filed Oct. 25th, 1875.

CHAS. OWENS,
Dep'y Clerk.

1171 *Note of Evidence.*

Succession of STEPHEN DUNCAN LINTON.

J. M. WELLS, Administrator,
vs.
MARIE EVANS. } No. 248.

Plaintiffs offers record of the succession of S. D. Linton; offers record of probate of will and the proceedings thereon, together with the petition of Mary Evans to be put — possession of the property, and with order thereon.

Filed October 26, 1875.

CHAS. MOORE, JR.,
Dep'y Clerk.

1172 Succession of S. D. LINTON. No. 1171.

To the honorable the judge of the ninth judicial district court in and for Rapides parish, Louisiana:

The petition of Coleman M. Calvit, who resides in the parish of Rapides & State of Louisiana, with respect shows—

That Stephen Duncan Linton, who recently departed this life intestate at his residence, near Paris, France, left property and effects in your parish of Rapides & — Louisiana, also a large number of creditors in the State, and that it becomes necessary to administer on said property; wherefore it is prayed that the said Coleman M. Calvit, after the legal notice and delay given, be appointed curator of the said succession on taking the oath and giving the bond according to law; that Joe W. Moore, recorder and notary public, be commissioned to take a true and faithful inventory of the said property and effects and make an apprais-ment thereof according to law. He prays for general an- equitable relief, &c.

RYAN & WHITE, *Att'ys.*

1173 THE STATE OF LOUISIANA,
Parish of Rapides.

District Court, Ninth Judicial District.

Succession of STEPHEN DUNCAN LINTON for Administration & Inventory. No. 1171.

Whereas Coleman W. Calvit has made application to this court to be appointed administrator of the estate of Stephen Duncan Linton, deceased, notice is hereby given to all whom it may concern to

show cause, within ten days from the publication of the same, — should not be granted.

Clerk's office, Alexandria, La., January 20th, 1868.

W. W. WHITTINGTON, Jr.,
Deputy Clerk.

Filed March 11th, 1868.

W. W. WITTINGTON Jr.,
Deputy Clerk.

1174 *Petition of Opposition of Louisiana State Bank.*

Succession of Stephen Duncan Linton. No. 1171.

To the honorable the judge of the ninth judicial district of Louisiana, sitting in and for the parish of Rapides:

The petition of Jules A. Blanc, a resident of the parish of Orleans and president of the Louisiana State Bank, — is a large creditor of the succession of Stephen D. Linton.

Petitioner opposes the appointment of Coleman M. Calvit as administrator of that succession, on the grounds that said applicant is not a creditor thereof nor a relative or connection of the deceased, and opponent now prays that his opposition be sustained, and in lieu of said appointment that your petitioner be appointed curator of the succession of Linton and such other orders be made as are necessary and proper. He prays for general relief.

MANNING,
Att'y for Petitioner & Opponent.

1175 District court, parish of Rapides, La.
Filed January 30th, 1868.
W. W. WHITTINGTON, Jr., *D'y Clerk.*

Petition of Opponent's for Provisional Curator.

Succession of S. Duncan Linton.

To the hon. the parish judge of Rapides parish:

Opponent prays that a guardian or provisional curator be appointed to take care of the property *pendente lite.*

MANNING,
Att'y for Opp.

Parish court.
Filed Oct. 8th, '68.

WM. D. CHANDLER, *D'y Clerk.*

In the matter of the curatorship of S. Duncan Linton it is ordered that John H. Ramsdell is appointed provisional curator and guardian of the property of the succession, and that he be put in possession of the same.

Done and signed in open court this the 8th October, 1868.

J. H. C. BARLOW,
Parish Judge.

1176 *Opposition of Eli Bush.*

Parish Court, Parish of Rapides.

Succession of S. DUNCAN LINTON. No. 1171.

Now, at this day, comes Eli Bush, of the parish of Rapides, and opposes the appointment of Coleman M. Calvit as administrator of the succession of S. Duncan Linton for the following reasons: That the said petitioner is not an heir or creditor of the succession and is, therefore, not entitled by law to the administration thereof.

Your opponent alleges that he himself is a creditor of the succession to an amount exceeding ten thousand dollars, with several years' interest, and that he holds a mortgage to secure its payment on the only tract of land owned by the intestate.

He therefore prays that the application of said Calvit be rejected and that he himself be appointed administrator and be admitted to qualify according to law, & for general relief.

WM. A. SEAY,
Att'y for Opp't.

Filed Dec. 10, 1868.

WM. D. CHANDLER,
Dep'y Clerk.

1177 *Petition of the Louisiana State Bank & Madam Anna De Boigne for Inventory.*

To the honorable the judge of the parish court for the parish of Rapides and State of Louisiana:

The petition of the Louisiana State Bank, of the Bank of Louisiana, and of Madam Anna De Boigne, creditors of the succession of Stephen Duncan Linton, deceased, shews the court that no inventory of that succession has yet been made; that the proceeding- for the appointment of a curator to said succession are now pending in said court. Petitioners prays the court to order an inventory of all the property of deceased situated in the parish of Rapides, to be taken by a notary public of your parish, who shall have the same appraised by two competent persons; that the same be returned to this court.

MANNING,
Att'y for Petitioners.

Parish court, parish — Rapides, La.
Filed December 17, 1868.

CHARLES OWEN,
Deputy Clerk.

1178 STATE OF LOUISIANA, }
Parish of Rapides. }

It is ordered that a commission issue to Wm. D. Chandler, a no-

tary public of this parish, duly qualified, commanding him to take an inventory of all the property in the parish of Rapides belonging to the succession of Stephen Duncan Linton, with appraisement, and return the same to this court.

Done and signed in open court on this 17th December, 1868.

J. H. C. BARLOW,
Parish Judge.

Commission to Take Inventory.

THE STATE OF LOUISIANA,
Parish of Rapides.

Parish Court.

Succession of STEPHEN D. LINTON. For Inventory.

To W. D. Chandler, notary public in and for the parish of Rapides, Greeting:

You are hereby authorized and empowered to take an inventory and appraisement of the property, real and personal, rights, credits, and effects belonging to the estate of Stephen D. Linton, late
1179 of said parish and State, and when you have so done make return thereof to our said court according to law.

Given under my hand and seal of office as deputy clerk of the parish court, parish of Rapides, on this 17 day of December, 1868.

CHAS. OWENS,
Dep'y Clerk.

Inventory.

THE STATE OF LOUISIANA,
Parish of Rapides.

Be it remembered that on this the 17th day of December, 1868, in pursuance to a commission issued from the honorable parish court in and for the parish of Rapides, State of Louisiana, and to me directed, I, William D. Chandler, a notary public in and for said parish and State, duly commissioned and qualified, having appointed Mr. John S. Butler and Mr. James R. Andrews, both residents of said parish and State, appraisers, I administered to them the following oath, to wit:

STATE OF LOUISIANA,
Parish of Rapides.

I do solemnly swear that I will well and truly appraise and a true cash value place upon all and singular the property, real and
1180 personal, rights, credits, and affects belonging to the estate of Stephen Duncan Linton, deceased, in said parish and State, that may be pointed out or shown to me, to the best of my ability and understanding, so help me God.

J. R. ANDREWS.
JOHN S. BUTLER.

Sworn to and subscribed before me this 17th day of December, 1868.

WM. D. CHANDLER,
Notary Public.

Whereupon we, the said notary and appraisers, in presence of T. J. Colamy and W. R. Hobbs, competent witnesses, proceeded to make and sign the following inventory and appraisement, at Alexandria, La., to wit:

A certain plantation known by the name of the "Quantico" plantation, situated in the parish of Rapides, on the east side of Bayou Boeuf, containing about eighteen hundred acres, said plantation lying at the mouth of Bayou Robert, about twelve miles from Alexandria, and bounded on the upper side by lands of Chambers and the lower side by L'Esperanza plantation of the late John Linton, deceased, together with the buildings and improvements thereon,

1181 fifteen hundred acres of which tract is open land and is appraised at $10 per acre $15,000

Three hundred acres of the tract woodland and appraised at $5 per acre 1,500

The whole of the above tract being appraised at $16,500

A tract of pine land about four miles from "Quantico," bounded east by lands of A. Duffel's succession, west by Ralph S. Smith's land, north by lands of Francoise Bird, containing twelve hundred acres, appraised at $0.50 per acre 600

$17,100

And nothing else being pointed out and knowing of nothing else as the property of the succession aforesaid, we here close the inventory, the full appraisement of the property being seventeen thousand one hundred dollars.

In testimony whereof all of the parties have signed on this the 17th day of December, A. D. 1868.

J. R. ANDREWS.
JOHN S. BUTLER,
WM. D. CHANDLER,
Notary Public.

Witnesses:
W. P. HOBBS.
T. J. COLAMY.

Parish court, parish of Rapides, La.
Filed Dec. 17th, 1868.

CHARLES OWEN,
Dep'y Clerk.

1182 *Testimony.*

Parish Court.

STATE OF LOUISIANA, }
Parish of Rapides. }

Suc. of S. D. LINTON. C. M. Calvit for Curatorship.

Testimony of witnesses in the above cause, taken by consent of counsel of the plaintiff and defendant, to be used upon the trial of this case.

COLE M. CALVIT, being sworn, deposeth and says that he was placed in possession of the "Quantico plantation" on or about the 20th day of January, 1866, by J. Madison Wells, Sr., as custodian of said property; that he has taken care of said property ever since that time, for which his services are worth twenty-five hundred dollars per annum; that J. Madison Wells was the agent of S. D. Linton, and that he has preserved as much as he could and circumstances would permit. It is now in a better condition than when I took charge of it, with the exception of the decay of the buildings.

HENRY W. ROBINSON, sworn, says:

Mr. Cole Calvit has had possession of the place since Jan'y 20th, 1866, until date. I know he was there by authority of J. M. Wells. I am not prepared to state what such services were worth.

1183 Cross-examination:

I cannot tell what the property is worth. I should think the cleared land was worth $10 per acre. The place is in bad condition, but better than at the time of the surrender.

There is some fencing. One field of 400 acres has a line fence seperating it from another part of the plantation. All the cabins are there that were there originally. The balance—gin, stables, and dwelling—were burned during the war. I would give $700 rent for the place next year, provided I could expend it in improvements.

CHAS. L. ROBINSON, sworn, says:

I know that Mr. Calvit's labourers have been on the place since January, 1866. Mr. Calvit has been managing the place. I, with my business, would not go on the place and manage it for less that $3,000 per annum; but Mr. Calvit may be situated differently.

X ex.:

I would not put labor on the place and manage it for less than $10,000 per year.

Question by opp. What is — worth per year to the custodain of that place in the condition in which it has been since 1866?

I do not understand the duties of a custodian, and therefore can-

not say any more than what I have already said. I think there is about from twelve to fifteen hundred acres of cleared land.

1184 J. MADISON WELLS, sworn, says: I was placed in possession of the place by the owner in 1863. I was to receive a portion of the cotton and corn then on the place. The object was to secure it from being destroyed by the Federals. Mr. Perkins, the father of Mrs. Linton, offered me $10,000, which I refused, and would only take it on condition of receiving a portion of this crop. I remained in possession of it from May, 1863, until Nov., 1863. A short time before I left—about August 12th—I was made custodian by the sheriff, Wm. J. Neal, sheriff of the parish of Rapides. My services as custodian would have been worth $35,000 *dollars* had the contract been carried out; but the cotton was burned about the 13th April, 1864, with the exception of some which Mr. Perkins had seized as abandoned, and the proceeds were paid over to one of the seizing creditors. I still retained the place as custodian after the war in order to make something out of it for my services rendered during the war, for which I have never received any pay, and consider that I am still in possession of it, through my agent,

1185 Mr. C. M. Calvit. My services, from the time I was appointed custodian until the present are worth $35,000. Mr. Calvit, acting as my agent, is still in possession of the place and is a creditor of the succession. Mr. Calvit'- services as custodian of the place was worth as much as he could have made elsewhere. Calvit was appointed about June 1st, 1866, by me as agent. I cannot tell what his services are worth. I was to receive $35,000. I have not been on the place for two years; do not think the place has been damaged. No property—cabins, fencing, &c.—has been destroyed since the war, but was destroyed by the soldiers during the war.

X ex.:

There is about 1,800 acres in the *the* property—1,500 acres open and 300 wood land. I think the property is worth about $5 per acre around. There are three grades of land in the tract. Of the open land about 900 acres is first-rate land; the balance of the open land is very inferior.

Plaintiff's Evidence.

J. M. WELLS re-examined:

Examined the account marked "A"; knows that Mr. Calvit has acted in the capacity as there set forth and charged from the date of the contract up to the present time; but what his services, as such,

1186 are worth he cannot exactly say; they may be worth more or may be worth less; am certain he has not injured the property, but has benefitted it by saving the buildings, fences, &c., on the place. My authority as custodian has never been revoked. I transferred to Mr. Calvit all my claims as custodian of the place from Jan'y 20th, 1866, to the present time.

X ex.:

I have transfer-ed my claim for services prior to 1866 conditionally, which conditions are not stipulated to Mr. Calvit or to any one. None of the wagons, mules, or implements on the place now or since the war belong to the Linton succession; no stock there belonging to the succession; nothing left but the bare land and buildings & part of one or two brick-kilns. There has been but little land — on the plantation since the war, not more than a fourth, and that not for the succession. Most of the land worked was by the freedmen for their own benefit.

C. M. CALVIT recalled:

I am a creditor of the succession for $7,500 for 3 years' custodianship, as set forth in account marked "A." I think the services reasonable as charged. The account is still due me. I look to
1187 the succession of S. D. Linton for payment and not to Gov. Wells, who placed me there, nor did I ever look to Gov. Wells for payment for such services.

The endorsement on the document marked "A," signed J. Madison Wells, was made to-day while giving his testimony.

Taken subject to objections and all legal exceptions except to manner, place, and form of taking the same.

WM. D. CHANDLEE,
Dep'y Clerk.

"A."

Estate of S. D. Linton to C. M. Calvit, Dr.

To services rendered in protesting and as keeper of Quantico plantation from the 20th day of January, 1866, to the 21st day of October, 1868, inclusive, $7,500.00.

E. & O. E.

Endorsement: I transfer the within account to C. M. Calvit, and hereby waive in his favor all my claims for the services as therein set forth and charged. Al'x'a, La. J. Madison Wells.

1188 JOHN H. RAMSDELL, being sworn, says:

I live about two miles from Quantico plantation. The plantation is in very bad condition, and has been ever since the war. Only a very small portion of it is enclosed, and that with a bad fence. It has not been enclosed with a fence since the war. All the houses were burned during the war except the cabins. It has been in this bad condition ever since the war, growing worse and worse every year. The place has been occupied only by negroes in the employ of Mr. Cole Calvit. These negroes have worked a field of about three or four hundred acres, and that is the only part of the plantation broken since the war. They cultivated the place this year on shares with Cole Calvit.

Mr. Cole Calvit does not live on the Quantico plantation, but on an adjoining one belonging to Mr. James M. Wells. I think that if the owner of the place does not charge Mr. Cole Calvit anything for the rent of the place that he is very well paid for his services. I think a charge of $2,500 per annum for such services exhorbitant and outrageous. The "Quantico" plantation was once very valuable, but now much delapidated. In the year- 1866 & 1867 I think there was more land under cultivation than there has been
1189 the present year, but how much more I cannot say. I think it has been all the time since the war under the charge of Mr. C. M. Calvit.

JNO. H. RANSDELL, X ex., says:

The Quantico plantation is a very large plantation. I knew it before the war. The improvements upon the place were all destroyed during the war except the cabins; the- were not all distroyed. Calvit has had possession of it ever since the war. I do not think that the plantation has been improved by his occupancy. I cannot say positively whether it has been improved or injured, to my knowledge. Calvit has not lived on the place in person. He lives between a quarter & a half a mile from it. None of the cabins have been torn down or put up, to my knowledge, since the war by Calvit. There was a great many hands on the place in 1866. If the land has been properly cultivated, the ditches kept open, &c., I do not consider it any disadvantage to the land. Owing to the condition of the country I consider it an advantage to have some one on hand to take care of them. If some one had not charge of the place it
1190 might have been very much injured by squatters. There is about 1,500 acres of open land. Had I had no land after the war, with the prospects before the people, I should have been willing to have taken charge of the place as custodian for its revenues, and once having got into it, the rails being on the ground, I should have continued for the years 1867 and 1868 on the same terms. I suppose that a man could be had to take charge of it for five or six hundred dollars per annum. I think I could have got a good man in 1866 to have taken charge of it for that. I do not know what has been on the place in 1866, 1867, & 1868. The years 1866 & 1867 were bad years for cotton, about half a crop in 1866 and scarcely any in 1867.

THOS. O. MOORE, sworn, says:

I have heard the testimony of Mr. Ransdell, and my testimony is the same, except that I do not know upon what terms Mr. Calvit & the negroes worked this year, except from what I have been told this year by the negroes.

X ex.:

I consider it an advantage to have some one on a place in these times, and a good man to take charge of it is absolutely necessary at all times, and particularly times like these.

1191 *Testimony of Abram Martin.*

Succession of S. D. LINTON. No. 1171.

Opposition of Bush and others.

Testimony of Abram Martin, taken by consent, to be read in evidence on the trial of this cause.

I live on Bayou Boeuf, in this parish, about 16 miles from this town, between 3 and 4 miles from the Linton plantation, called "Quantico." The plantation was worked by Linton until Dr. Perkins carried the negroes to Texas, in latter part of 1862 or first of 1863. The plantation was not in cultivation in 1864; if it was it was cultivated by Governor Wells; it was not by the Linton negroes. The plantation remained waste until 1866, when a portion of it was cultivated by Gov. Wells. A portion of it was cultivated by Mr. C. M. Calvit in 1867 and 1868. The plantation since the war has been in bad repair; nearly all the fences down; the houses in bad repair, but habitable, yet much dilapidated. The outbuildings—that is, the stables, gin-house, crib—were destroyed during the war. The plantation remained in this dilapidated condition until it was sold. The uppur bend field had a fence run
1192 from one bank of Bayou Robert to the other along the public road, and the negroes had some patches fenced about the quarter. These were all the repairs or improvements made on the place. Mr. C. M. Calvit did not live on the place; he lived on Gov. Wells' place, which is adjoining the Quantico place. His freedmen, however, that he had employed lived on the Quantico place. I do not know that there was any stock there since the war belonging to the Lintons. The stock and farming implements used on the place since the war were brought there by other parties than the Lintons. Nothing was there to take care of except the land and overseer's house and quarters. I am not prepared to say what is a proper compensation for taking care of it, but if I had done the work that was done on the place and got the use of it free of rent I would have been very willing to have quit. I mean by this that the rent of the land was a fair offset to the improvements. It was worth the taking care of it.

X ex.:

I know that Mr. Calvit was the acknowledged representative of the place in 1867 and 1868. The quarter is very large—double
1193 frame cabins & brick chimneys at each end—a valuable quarter. Either army during the war was much more apt to destroy the buildings on a plantation that was vacant than on one occupied. Mr. Calvit moved on Gov. Wells' place last of Dec. or Jan'y, 1866.

Re-ex.:

I know that Mr. Calvit was the acknowledged representative of

the place from his having negroes and putting them on the place. He had charge of it, and no one went there without his permission. I never saw any authority to him from any one. The only source from which I learned that Mr. Calvit had any authority to go there was from hearing Gov. Wells say so in his testimony taken some time ago in this case. The only way I know Mr. Calvit was put there was from that testimony.

ABRAM MARTIN.

The above taken subject to all legal exceptions.
April 14, 1870.

THOS. C. MANNING,
Att'y for Oppo.
J. G. WHITE &
R. A. HUNTER.

Testimony of W. J. Neals.

Succession of S. D. LINTON.

Testimony of WILLIAM J. NEAL, sworn, deposes and says: I was sheriff of the parish of Rapides in the year 1862 & 1863. As
1194 sheriff I made seizure of the plantation—I mean the Duncan Linton property—with everything on it. I appointed J. M. Wells custodian of the property seized in the year 1863, in May, at the request of J. K. Elgee, who was attorney for the seizing creditors. It was a large plantation, and had negroes, mules, and stock, &c., on it, of which I seized. The custodian was not removed by me. I know of no records.

X ex.:

I seized the property—the property of Duncan Linton. I don't know who was the seizing creditor. The process under which I seized was an order of seizure and sale. I do not recollect whether or not the order eminated from the courts of New Orleans or the courts of this parish. This order was issued upon a mortgage of about one hundred thousand dollars, more or less. When a payment was made to the witness as sheriff of over ten thousand dollars I was ordered — the sale and the sale was stopped. I appointed J. M. Wells as custodian after the raid of 1863. Wells was on the place when I placed him as custodian. I do not mean that he lived there, but was on the place that day. I do not know whether he stayed
1195 there or not. He lived on an adjoining plantation. Witness was in town a few days after the raid and a few days before the raid of 1864, and I saw nothing of Mr. Wells then. I never appointed any other custodian after Mr. Wells left. There was no manager or overseer after Mr. Linton stole all the negroes. There was nothing left but the land and about sixty bales of cotton and the improvements and an old lame negroe and cow. Mr. Linton carried off the negroes and all the teams, all the cotton, except the quantity I mentioned at the first Yankee raid, May, 1863. It was

after the removal of the property I have mentioned that I placed Mr. Wells custodian. On the day I put Wells in possession of the place there was nothing left but the land and improvements and cotton mentioned above. I do not know what became of the cotton, but a portion was in bale and a portion in the seed, the largest part being baled in a good house and in good condition. Witness says that what he means about the payment of $10,000 and over and the stopping of the sale is that terms of sale required the payment of that much cash.

1196 Taken in open court this the 22nd day of June, 1870.
C. V. LEDOUX, *De'y Clerk.*

Testimony of Wm. Polk.

Agreed to admit following testimony in the suit suc. of S. D. Linton.

F. C. MANNING, *Att'y.*
WHITE & HUNTER.

Testimony of Wm. Polk.

I live in this parish, adjoining the Quantico plantation, the property of the late Duncan Linton. This plantation was in 1866 in a dilapidated condition, and so remained until after its purchase by Mr. Robinson. There was comparatively little fencing on it and in bad condition, and the building goneing to wreck. There was no one living on the property except negroes, nor did live upon it until Mr. Robinson became the purchaser; no repairs or improvements made on it during the war or since until Robinson became the owner. The plantation having been swept of everything during the war except the house and land, living as I am adjoining the place if I had had charge of it and rendered only such services as I believe I should have considered my services amply compensated by
1197 such cultivation of the property as was made in those years.
WM. POLK.

Parish court.
Filed Oct. 4th, 1870.

C. V. LEDOUX, *D'y C'k.*

Petition of Samuel H. Kennedy, President of the Louisiana State Bank, to be Appointed Curator.

Parish Court, Parish of Rapides.

Succession of S. D. LINTON. No. 1171 (old series).

Now, at this day, comes Samuel H. Kennedy, of the parish of Orleans, who alleges that he has recently been elected and is now the president of the Louisiana State Bank, domiciliated in said parish of Orleans. Adopting all the allegations contained in the petition

of his predecessor on file in this cause, he opposes the application of Coleman M. Calvit for the curatorship of said succession, and asks that he be appointed curator of the same, for general relief, &c.

MANNING & SEAY,
Att'ys for Pet'r.

Parish court, parish of Rapides, Louisiana.
Filed April 6th, 1870.

CHARLES OWENS, *Dep. Clerk.*

1198 *Petition of Opponents for a Commission to Take the Testimony of P. Hickey Morgan.*

Succession of S. D. LINTON. For Curatorship. No. 1171.

To the honorable the judge of the parish court, parish of Rapides:

Opponents respectfully represent that the testimony of P. Hickey Morgan, who resides in the parish of Orleans, is material to establish their opposition, and that they cannot safely go to trial without it. Wherefore they pray that a commission issue to some judge or justice of the peace in the parish of Orleans to take the deposition of the said P. Hickey Morgan, to be read as evidence on the trial of this case, and that the subjoined interrogatories be propounded to him.

MANNING & SEAY,
Att'y- for Opponents.

Interrogatories on the Part of Opponents.

1. State your name, profession, and residence.
2. Were you acquainted with the late S. Duncan Linton?
3. Do you know James M. Wells?

1199 4. Have you any acquaintance with the business affairs of S. Duncan Linton?

5. Do you know anything of an alleged agency of J. M. Wells in the management of the affairs of S. D. Linton, how it originated and — it was executed?

6. Was there or was there not an amount of cotton on the plantation of S. Duncan Linton, in the parish of Rapides, during the war; and, if so, how much?

7. Will you state the length of time the said cotton remained on the Linton plantation, in the parish of Rapides?

8. Do you know accurately what became of said cotton?

9. If it was sold will you state by whom or by whose authority or for what sum?

10. Do you know what became of the proceeds of this cotton?

11. State any further information in your power with regard to the disposition of the cotton on the Linton plantation, in the parish of Rapides, during the late war.

MANNING & SEAY,
Att'y- for Opponents.

Parish court.
Filed May 20th, 1870.

C. V. LEDOUX,
Deputy Clerk.

1200 Service of the foregoing interrogatories accepted, reserving all legal exception thereto, and especially accepting to the admissibility of the answers to each of the foregoing interrogatories as being irrelevant and having no connection with the case at issue.

J. G. WHITE,
R. A. HUNTER, *Att'ys.*

Let a commission issue as prayed for.
This done and signed this 20th day of May, 1870.

J. KELSO,
Parish Judge.

Filed May 20th, 1870.

C. V. LEDOUX, *Dep'y Cl'k.*

Petition of Public Administrator to be Appointed Administrator and for an Inventory.

Succession of STEPHEN DUNCAN LINTON. No. 1171, Probate Docket.

To the hon. the parish judge of the parish of Rapides:

The petition of Orestes K. Hawley, public administrator of your parish aforesaid, respectfully shows your court that the above
1201 succession is a vacant one; that there is a contest now pending before your honl. court for the curatorship of said succession.

Wherefore your petitioner prays that he be appointed administrator of the aforesaid succession, as provided by law, to administer the same until further ordered by this court, and that he be put in possession of the property and effects of the above and aforesaid succession, and that a commission issue to C. V. Ledoux, notary public of your parish aforesaid, to take a true and faithful inventory of the property and effects belonging to said succession of Stephen Duncan Linton, deceased, and for all further orders in the premises and for general and equitable relief.

O. K. HAWLEY,
Public Administrator, &c.

Parish court, parish of Rapides.
Filed Sept. 14, 1870.

W. S. BRINKHURST, *D'y C'k.*

Order.

Let the prayer of the petition as asked for in the above and foregoing petition be granted, and let a commission issue to C. V.

Ledoux, notary public for the parish of Rapides, La., ordering
1202 him to take a true and faithful inventory of all the property and effects belonging to the succession *of* aforesaid of Stephen Duncan Linton, deceased.

JOHN KELSO,
Parish Judge.

Filed 14 Sept., 1870.

W. S. BRINGHURST,
Dep'y Clerk.

Notice.

Succession of S. DUNCAN LINTON No. 1171.

All persons having claims against the succession of Stephen Duncan Linton will present the same for payment, and those indebted to said succession will pay the same to the undersigned without delay.

O. K. HAWLEY,
Public Administrator.

Commission to Take Inventory.

THE STATE OF LOUISIANA:

Parish Court, Parish of Rapides.

Succession of STEPHEN DUNCAN LINTON. No. 1171.

To C. V. Ledoux, notcry public in and for the parish of Rapides, Greeting:

1203 You are hereby authorized and empowered to take an inventory and apprais-ment of the property, real and personal, rights, credits, and effects belonging to the estate of Stephen Duncan Linton, late of said parish & State; and when you have so done make return thereof to our said court according to law. By order of the court.

Given under my hand and seal of office as clerk of the district court, parish of Rapides, on this 14th day of September, 1870.

W. S. BRINGHURST,
Dep'y Clerk.

Inventory.

THE STATE OF LOUISIANA, }
Parish of Rapides. }

Be it remembered that on this twentieth day of September, 1870 in pursuance to a commission issued from the honorable parish court in and for the parish of Rapides, State of Louisiana, and to me directed, I, C. V. Ladoux, a notary public in and for said parish and State, duly commissioned and qualified, having appointed Michael Legras and Mr. John Clements, both residents of said parish and State, appraisers, I administered to them the following oath, to wit:

1204 STATE OF LOUISIANA, }
Parish of Rapides. }

I do solemnly swear that I will well and truly appraise and a true cash value place upon all & singular the property, real and personal, rights, credit, and effects belonging to the estate of Stephen Duncan Linton in said parish and State that may be pointed out or shown to me to the best of my ability and understanding, so help me God.

MICHAEL LEGRAS.
JOHN CLEMENTS.

Sworn to and subscribed before me this 20th day of Sept., 1870.

C. V. LEDOUX,
Notary Public.

Thereupon we, the said notary and appraisers, in presence of Alphonse Baillo and W. S. Bringhurst, competent witnesses, proceeded to make and sign the following inventory & appraisement, to wit:

A certain plantation or tract of land called Quantico, situated in the parish of Rapides, on the east side of Bayou Boeuff, and containing about eighteen hundred acres, and about twelve miles from Alexandria, at the mouth of Bayou Robert, bounded on the upper
1205 side by the Chambers lands and on the lower side by L'Esperanza plantation, together with all the buildings and improvements thereon, appraised 1,500 acres at fifteen dollars per acre, 300 acres at $5.00 per acre, amounting to ---------- $24,000

A tract of pine land, about four miles from Quantico, bounded east by land of A. Duffell'- succession, west by Ralph S. Smith's land, north by lands of François Birds, containing twelve hundred acres, appraised at three dollars per acre, amounting to ---------- 3,600 00

Knowing of nothing further and nothing else being pointed out to us, we here close this inventory and appraisement, amounting in the aggregate to the sum of twenty-seven thousand six hundred dollars---------- $27,600 00

In testimony whereof we hereunto sign our names in the presence of the undersigned competent witnesses on the day and year first above written.

MICHAEL LEGRAS.
JOHN CLEMENTS.
C. V. LEDOUX,
Notary Public.

Witnesses:
W. S. BRINGHURST.
ALPHONSE BAILLO.

Parish court, parish of Rapides.
Filed 20th Sept., 1870.

C. V. LEDOUX,
Deputy Clerk.

1206 *Opposition of Public Administrator.*

Succession of S. DUNCAN LINTON. No. 1171.

To the honorable the judge of the parish court, parish of Rapides:

Orestes K. Hawley, public administrator, opposes the appointment of all the applicants for the curatorship of this succession, and asks that he be put in possession of the effects thereof as administrator for the following reasons: He alleges that it is a vacant succession; that there are no heirs present or represented in the State, and he is therefore entitled to the administration by law.

He prays that the prayers of petitioners be rejected, and that he be decreed to be the proper administrator of the succession, & for general relief.

O. K. HAWLEY,
Public Adm'or.

Parish court, parish of Rapides.
Filed Oct. 12, 1870.

W. S. BRINGHURST,
Dep'y Clerk.

1207 *Judgment.*

STATE OF LOUISIANA:

Parish Court, Parish of Rapides.

Succession of STEPHEN DUNCAN LINTON. For administration. No. 1171.

This cause being set for hearing on the application of Coleman M. Calvit and the opposition thereto, and having been heard by reason of the law, and the evidence being in favor of opponent, Orestes K. Hawley, public administrator of Rapides parish, it is ordered, adjudged, and decreed that said opponent be, and he is hereby, appointed to administer the succession of Stephen Duncan Linton, deceased, and that he be put in possession of the property of the same, the costs hereof to be paid by the succession.

Done, read, and signed in open court this 17 day of March, 1871.

R. J. BOWMAN,
Attorney-at-Law, in Place of Parish Judge, Recused.

Filed March 17, 1871.

W. S. BRINGHUNT,
Dep'y Clerk.

1208 *Tableau of Debts.*

Parish Court.

Succession of S. DUNCAN LINTON. No. 1171.

Privilege debts.

Law charges:

1. Clerk's fees	
2. Notary's fees	$25 00
3. Printer's fees	
4. Commissions of public administrator, 5 p'r ct. on inventory	17,858 00
5. Fees of T. C. Manning & W. A. Seay, att'ys	1,000 00

Mortgage debts.

1. Louisiana State Bank, viz:

1 note bearing 8 per ct. interest—

From Jan. 13, 1862, for	$10,833 33⅓
" Feb'y 13, 1862, "	10,833 33⅓
" March 13, 1862,	10,833 33⅓
" March 13, 1862,	10,833 33⅓
" Jan'y 13, 1863,	10,833 33⅓
" Feb. 13, 1865,	10,833 33⅓
" March 13, 1863,	10,833 33⅓
" March 18, 1863,	10,833 33⅓

2. Bank of Louisiana, viz:

1 note bearing 8 per ct. interest—

From Feb'y 13, 1861, for	10,833 33⅓

3. Madam Anna De Boigne, viz:

1 note bearing 8 per ct. interest—

From Jan'y 12, 1861, for	10,833 33⅓

1209 4. Eli Bush, viz:

1 note bearing 8 per ct. interest—

From Nov. 10, 1861, for	$10,833 33⅓

To secure the above-named mortgaged debts a mortgage exists by act dated December 27, 1859, & duly reinscribed on the Quantico plantation in the parish of Rapides, belonging to said succession, about 12 miles from Alexandria, on the east side of Bayou Boeuff, at the mouth of Bayou Robert, bounded on the upper side by the Chamber lands and on the lower side by L'Esperanza plantation, together with all the buildings & improvements thereon, the engines, machinery, and apparatus, the whole tract containing about 1,800 acres.

To the honorable the judge of the parish court, Rapides parish:

Orestes K. Hawley, public administrator of Rapides, and as such administering the succession of Stephen D. Linton, presents herewith a tableau of the debts due by said succession, and prays that it be advertised and after the legal delays confirmed, homologated, and made the judgment of the court.

MANNING & SEAY,
Att'ys for Petitioner.

1210 Parish court, parish of Rapides.
Filed May 31, 1871.

C. V. LEDOUX, *Clerk.*

Orestes K. Hawley, public administrator, makes oath and says that Hon. H. L. Daigre, parish judge, having been of counsel in the succession of S. Duncan Linton, is recused in all legal orders and suits connected therewith.

O. K. HAWLEY.

Sworn to & subscribed before me this 3d day of May, 1871.
C. V. LEDOUX, *Clerk.*

Ordered that the tableau of debts of the public administrator of Stephen Duncan Linton, exhibiting the debts due by said succession, be advertised for ten days.

Done and signed at chambers this 3d day of May, 1871.
J. OSBORN,
District Judge.

I have examined the foregoing tableau of debts, and have no objection to its homologation.

W. W. WHITTINGTON, JR.,
Att'y for Absent Heirs.

1211 *Advertisement.*

No. 1171. Succession of S. DUNCAN LINTON.

Parish Court.

Whereas O. K. Hawley, public administrator, has filed in this office a tableau of debts due by the succession of Stephen Duncan Linton, notice is hereby given to all whom it may concern to show cause within ten days from the date hereof why the same should not be homologated and confirmed.

Clerk's office, Alexandria, La., May 5th, 1871.

C. V. LEDOUX, *Clerk.*

Evidence.

Succ. S. D. LINTON. No. 1171.

Rapides Gazette of May 6 & May 13, 1871. Poster from court-house door of same advertisement taken in open court this 5 June, 1871.

W. S. BRINGHURST,
Deputy Clerk.

Petition of Public Administrator to Sell Property to Pay Debts.

1212 Parish Court, Parish of Rapides.

Succession of S. DUNCAN LINTON. No. 1171.

The petition of Orestus K. Hawley, public administrator, and as such administering the succession of Stephen Duncan Linton, respectfully represents that the debts of the succession are largely in excess of the assets, as exhibited by the tableau and inventory, and that it therefore becomes necessary to sell all the property thereof for the payments of debts. Therefore he prays that an order issue from your honorable court, commanding the sale of all the property belonging to the said succession for the payment of debts according to law, for general relief, &c.

MANNING & SEAY,
Att'y- for Petitioner.

Parish court, parish of Rapides.
Filed May 3, 1871.

C. V. LEDOUX, *Clerk.*

Orestes K. Hawley, public administrator, make- oath and says that the Hon. A. L. Daiger, having been attorney in the succession of Stephen Duncan Linton, is recused in all orders and suits connected therewith.

O. K. HAWLEY.

Sworn to and subscribed before me this 3d day of May, 1871.
C. V. LEDOUX, *Clerk.*

1213 Let the prayer of the petitioner be granted. Let an order of sale issue to Oreastus K. Hawley, public administrator, commanding him to sell for the payment of debts, according to law, the following property belonging to the succession of Stephen Duncan Linton, to wit: A certain plantation, called Quantico, containing about eighteen hundred acres, situated in the parish of Rapides, about twelve miles from Alexandria, on the east side of Bayou Boeuff, at the mouth of Bayou Robert, bounded on the upper side by the Chambers lands and on the lower side by L'Esperanza plantation, together with all the buildings and improvements thereon, engine, machinery, and apparatus, mortgaged to secure certain debts set forth in an act of mortgage*d* dated March 27th, 1859, and also a

certain other tract of land about four miles from Quantico, bounded east by lands of A. Duffill's succession, west by lands of Ralph S. Smith, and north by land of Francois Bird, containing twelve hundred acres, more or less.

This done and signed at chambers this 3d day of May, 1871.

J. OSBORN,
District Judge in Place of Parish Judge, Recused.

1214 *C. M. Calvit's Opposition to Homologation of Tableau.*

Parish Court, Parish of Rapides.

Succession of S. DUNCAN LINTON. No. 1171.

Now, at this day, comes Coleman M. Calvit and opposes the homologation of the tableau for the following reasons: He is a creditor of the said succession to the amount of six thousand dollars, as a privilege claim for law charges and costs, which said claim is not in the tableau; wherefore he prays that he be recognized as a creditor with a privilege, as above set forth, & be placed as such on the tableau.

WHITE & HUNTER, *Att'y-*.

Parish court, parish Rapides.
Filed 5th June, 1871.

W. S. BRINGHURST,
D'p'y Clerk.

Petition to Appoint Attorneys for Absent Heirs..

Parish Court, Parish of Rapides.

Succession of S. DUNCAN LINTON. No. 1171.

There being absent heirs of the decedent, it is prayed that an attorney of this court be appointed to represent them in the settlement of this succession.

MANNING & SEAY, *Attorneys.*

1215 Parish court, parish of Rapides.
Filed June 7th, 1871.

W. S. BRINGHURST,
De'ty Clerk.

Let W. W. Whittington, Jr., be appointed to represent the absent heirs in the succession of S. Duncan Linton.
June 6th, 1871.

H. L. DAIGRE,
Parish Judge.

I accept the above appointment.
June 7th, 1871.

W. W. WHITTINGTON, JR., *Att'y.*

Opposition of the President of the Louisiana State Bank.

Succession of S. D. LINTON. No. 1171.

The opposition of Samuel H. Kennedy, president of the Louisiana State Bank, to the tableau of debts filed by the public administrator herein shows the court that the said bank is a large creditor of said succession, with mortgage upon the lands situated in Rapides
1216 parish, and is thus recognised upon the tableau, and he opposes the recognition of a certain note as a just debt of the estate of the deceased, on the ground that it is prescribed and has no longer any existence as a claim against the same. This note is one of the series of mortgage notes and is dated December 27th, 1859, and is for $10,833.33⅓, and bears eight per cent. interest from March 10, 1861, its maturity, and is owned by Eli Bush.

Opponent alleges that this note, unlike the others of the series of mortgage notes, has never been reduced to a judgement, and is now extinguished. He pleads the prescription of five years thereto, and denies that the administrator can give to said note vitality or constitute it a legal debt of the succession by placing it on the tableau, as has inadvertently been done. He prays the tableau be amended by rejecting this note therefrom.

HYAMS & JONAS,
Att'y for Opponent.

Parish court, parish of Rapides.
Filed June 12, 1871.

W. S. BRINGHURST,
Dep'y Clerk.

1217 *Opposition of Attorney of Absent Heirs.*

Parish of Rapides, Parish Court, State of Louisiana.

Succession of STEPHEN D. LINTON. Tableau of Debts.

The attorney of absent heirs shows the court that a claim of Eli Bush has been placed on the tableau of debts—a note dated 1859 and maturing in 1861, which is prescribed, and should not therefore be recognized as a debt of the succession.

Opponent opposes the allowance of this claim, and prays the tableau be amended by striking it off.

W. W. WHITTINGTON,
Attorney for Absent Heirs.

Par. court, par. Rapides.
Filed June 16th, 1871.

W. S. BRINGHURST,
Dep'y Clerk.

The order appointing W. W. Whittington, Jr., attorney to represent absent heirs in this suit is annulled, revoked, and set aside, having been done and signed in error.

This done and signed & read in open court this 16th day of June, 1871.

H. L. DAIGRE, *Par. Judge.*

1218 *Application of Public Administrator for the Appointment of an Attorney of Absent Heirs.*

In the Matter of the Succession of S. D. LINTON. No. 1171.

To the honorable the judge of the parish of Rapides:

The petition of O. K. Hawley, in his capacity of public administrator and administrator of said succession, respectfully represents that he has taken out an order for the sale of the property of said succession and filed a statement of debts without having an attorney for absent heirs appointed to represent said absent heirs of said succession, with whom said order ought to have been rendered, contradistorily that he has ascertained that such an appointment ought to be made; wherefore petitioner prays that an attorney for absent heirs be appointed, and that he be cited to show cause why the property of said succession shall not be sold in accordance with said order of sale and the proceeds be distributed according to said tableau of debts.

O. K. HAWLEY,
Public Administrator, in Propria Persona.

1219 Having been recused in the above-entitled succession, I decline making any appointment as prayed for.

H. L. DEAIGRE,
Parish Judge.

The foregoing petition being considered, and the parish judge having recused himself, it is therefor- ordered that R. J. Bowman be appointed att'y to represent the absent heirs of said succession, and that he be cited to show cause why said succession property should not be sold in accordance with said order and the proceeds distributed according to said tab-eau of debts.

Done & signed at chambers this the 20th day of June, A. D. 1871.

J. OSBORN,
District Judge.

I hereby accept the foregoing appointment, and waive service June 30, 1871.

R. J. BOWMAN.

Parish court, parish of Rapides.
Filed June 30, 1871.

C. V. LEDOUX, *Clerk.*

1220 *Answer of Attorney of Absent Heirs.*

In the Matter of the Succession of S. D. LINTON.

In this case now comes R. J. Bowman in his capacity of att'y of absent heirs, and in answer to the application of O. K. Hawley, adm-strator to sell certain property of said succession, represents that he has not had, since his appointment, time to ascertain the debts against said succession, and this appearer opposes the sale of any property of said succession beyond an amount sufficient to pay the expences of administration until the indebt-ness of said succession is ascertained.

R. J. BOWMAN,
Att'y for Absent Heirs.

Parish court, parish of Rapides.
Filed July 27th, 1871.

C. V. LEDOUX, *Clerk.*

Order of Sale.

STATE OF LOUISIANA, }
Parish of Rapides. }

Parish Court.

1221 Succession of S. DUNCAN LINTON. No. 1171.

To O. K. Hawley, public administrator:

You are hereby commanded to sell for the payments of debts; in the manner prescribed by law, the following-described property, to wit, a certain tract of land about four miles from the "Quantico plantation," in this parish, bounded east by lands of A. Duffell's succession, west by lands of Ralph Smith, and north by lands of Francois Bird, containing twelve hundred acres, more or less.

And how you have executed this writ make returns to our said court as the law directs.

Witness the Hon. Jno. Osborn, judge of the district court, in place of Hon. H. L. Daigre, judge of the parish court, recused, at Alexandria, this 28th day of July, 1871.

C. V. LEDOUX, *Clerk.*

Received 28th July, 1871. For the manner in which I have executed the within order of sale *and* see process verbal filed herewith this 21st day October, A. D. 1871.

O. K. HAWLEY,
Public Amist.

Parish court, parish Rapides.
Filed October 26th, 1871.

CHAS. OWENS,
Dep'y Clerk.

1222 *Attorney of Absent Heirs' Opposition to Tableau.*

Parish of Rapides.

In the Matter of the Succession of S. D. LINTON. No. 1171.

In this case now comes R. J. Bowman, att'y for absent heirs, and opposes the allowance of the following claim placed on the tableau of debts filed by the adminst.: Opponent opposes the allowance or recognition of the notes claimed by the Louisiana State Bank, Bank of Louisiana, Anna De Boyne, & Eli Bush on the ground that said notes are prescribed by the lapse of five years from their maturity.

Opponent opposes the claim set forth in the opposition of C. Calvit on the following grounds, viz:

1st. That J. M. Wells, from whom the said Calvit claims his appointment as keeper of said property, was appointed keeper by the sheriff in an executionary proceeding taken out many years ago and which has been long since *been* abandoned, and said Wells was without authority to delegate his authority or to place a
1223 keeper over said property, and that the authority of the said Wells and the sheriff who appointed him expired when the said executory proceedings were abandoned.

2nd. Because the expense or cost of a keeper was a charge against the plaintiffs in said executory proceedings & for which the succession was in no manner liable, unless the said property had been sold under said executory proceedings.

3d. Because the said Calvit has, under the pretence of keeping said property, used the said property for his own benefit, which has more than compensated him.

Wherefore this opponent prays that the said claims of the said Bank of Louisiana, of the Louisiana State Bank, of Annie De Boyne, Eli Bush, and C. M. Calvit may be rejected & for costs and general relief.

R. J. BOWMAN,
Att'y for Absent Heirs.

Filed August 18, 1871.

C. V. LEDOUX, *Cl'k.*

Estate of S. D. Linton to William Morris, Dr.

1224 To services as overseer on the Quantico plantation from 1853 to 1856, three years, at $900 per year	$2,700
Less paid	2,100
Balance	$600
Interest on same at eight per cent.	864
Total	$1,464

Parish court, par. Rapides.
Filed August 30th, 1871.

W. S. BRINGHURST, *D'y Clerk.*

61—347

Estate S. D. Linton to D. Sullivan.

1861.
Nov. 16. To 1 box of cigars $7 50

Parish court, parish of Rapides.
Filed Sept. 5th, 1871.

C. V. LEDOUX, *Clerk.*

Application of Public Admin'ŧr for Appraisement in Lots.

To the honorable parish judge of the parish court of the parish of Rapides:

The petit-on*or* of Orestus K. Hawley, of the parish of Rapides, public administrator for the vacant succession of Stephen D. Linton, deceased, both by effect of law and the appointment of court,
1225 with respect represents that the*ir* has been an order of court to sell 1,282.61 acres of land, as per plat made, on file, and has by survey been divided into 31 lots, so that the sale be made in conformity to the provision of constitution, act 132.

That the apprais-ment heretofore made has been in mass or block; that the lots are of different values, but in the way it has been inventoried and appraised every lot has the same appraisement, the consequence of which some lots will be sold and others cannot be sold, as they are estimated and appraised beyond their value, though the object of administration and law is that the property be disposed of so there may be a complete administration of the estate. Petitioner therefore prays that a new and additional appraisement and inventory of the property be made by order of court, &, as the parish judge has recused himself as to the estate and its administration, petitioner prays that the proper authority may grant the authority; prays for general relief.

W. B. HYMAN, *Att'y.*
O. K. HAWLEY,
Pub. Adm'ŧr.

Parish court, parish of Rapides, La.
Filed Sept. 7, 1871.

C. V. LEDOUX, *Clerk.*

1226 STATE OF LOUISIANA, }
Parish of Rapides. }

By reason of law let the prayer of the petitioner be granted; and it is further ordered that William S. Bringhurst, a notary public in & for the parish of Rapides, make the inventory and appraisement of the property prayed to be thus done in conformity to law.

Done and signed in chambers this the 8th day of September, A. D. 1871.

J. OSBORN,
District Judge.

I have recused myself in the succession, and hereby recuse myself in any matter connected with it.
Sept. 8th, 1871.

H. L. DAIGRE,
Par. Judge.

Parish court, parish of Rapides, La.
Filed Sept. 8th, 1871.

C. V. LEDOUX, *Clerk.*

Commission to Take Inventory.

THE STATE OF LOUISIANA:

Parish Court, Parish of Rapides.

1227 To William S. Bringhurst, notary public in and for the parish of Rapides, Greeting:

Successors of S. D. LINTON. For Inventory and Appraisement. No. 1171.

Your are hereby authorized & empowered to take an inventory and apprais-ment of the property, real and personal, rights, credits, and effects belonging to the estate of Stephen Duncan Linton, deceased, late of said parish and State, and when you have so done make return thereof to our said court according to law. By order of the court.

Given under my hand and seal of office, as clerk of the district court, parish of Rapides, on this 7th day of September, 1871.

C. V. LEDOUX, *Clerk.*

STATE OF LOUISIANA, }
Parish of Rapides. }

Be it known that I, William S. Bringhurst, a notary public in and — the parish and State aforesaid, by virtue of a commission from the Honl. John Osborn, judge, bearing date the eighth day of September, A. D. 1871, which is hereto annexed, authorizing and
1228 empowering me to make an inventory and apprais-ment of the property belonging to the succession of Stephen D. Linton, as per plat on file in said succession, situated in the parish of Rapides aforesaid, this day proceeded, at Alexandria, La., to make said inventory and apprais-ment, being herein assisted by Thomas J. Severns and Charles L. Robinson, both of said parish, freeholders, as appraisers, and in presence of the witnesses hereinafter named and undersigned; which said appraisers, before proceeding to make said appraisement, took and subscribed the following oath, viz:

I do solemnly swear that I will make a true & correct appraisement of the property of the succession situated in this parish according to the best of my ability and understanding, so help me God.

THOS. J. SEVERNS.
CHAS. L. ROBINSON.

Sworn and subscribed before me this — day of September, 1871.

——— ———,
Notary Public.

And, said appraisers having taken and subscribed the foregoing oath, I proceeded to make the inventory aforesaid, and the following is a true and correct list of all said property of which we have
1229 any knowledge and the appraisement thereof made by said appraisers, to wit:

First. A tract of land situated in said parish and State, in township three (3) north of range (2) west, and containing — lots or subdivisions, together with all the improvements, &c., thereon or thereunto belonging.

Lot No. 1, containing forty-two & 21-100 acres, appraised at fifty cents per acre	$21 12
Lot No. 2, containing forty-two 24-100 acres, appraised at fifty cents per acre	21 12
Lot No. 3, containing forty-two 24-100 acres, appraised at fifty cents per acre	21 12
Lot No. 4, containing forty-two 24-100 acres, appraised at fifty cents per acre	21 12
Lot No. 5, containing forty-two 24-100 acres, appraised at fifty cents per acre	21 12
Lot No. 6, containing forty-two 24-100 acres, appraised at fifty cents per acre	21 12
Lot No. 7, containing forty-two 24-100 acres, appraised at fifty cents per acre	21 12
Lot No. 8, containing forty-two 24-100 acres, appraised at fifty cents per acre	21 12
Amount carried forward	$168 96
Amount brought forward	$168 96

Second. A tract of land situated in said parish and State, in township two north of range one west, and containing eighteen lots or subdivisions, together with
1230 all the improvements thereon or thereunto belonging.

Lot No. 1, containing forty 68-100 acres, appraised at twenty-five cents per acre	10 17
Lot No. 2, containing forty 68-100 acres, appraised at twenty-five cents per acre	10 17
Lot No. 3, containing forty 68-100 acres, appraised at twenty-five cents per acre	10 17
Lot No. 4, containing forty 68-100 acres, appraised at twenty-five cents per acre	10 17
Lot No. 5, containing forty 68-100 acres, appraised at twenty-five cents per acre	10 17
Amount carried forward	$219 81

Amount bro't forward	$219 81
Lot No. 6, containing forty 68-100 acres, appraised at twenty-five cents per acre	10 17
Lot No. 7, containing forty 68-100 acres, appraised at twenty cents per acre	10 17
Lot No. 8, containing forty 68-100 acres, appraised at twenty-five cents per acre	10 17
Lot No. 9, containing forty 68-100 acres, appraised at twenty-five cents per acre	10 17
Lot No. 10, containing forty 68-100 acres, appraised at twenty-five cents per acre	10 17
Lot No. 11, containing forty 68-100 acres, appraised at twenty-five cents per acre	10 17
Lot No. 12, containing forty 68-100 acres, appraised at twenty-five cents per acre	10 17
Lot No. 13, containing forty 68-100 acre-, appraised at twenty-five cents per acre	10 17
Amount carried forward	$311 34
Amount bro't forward	$311 34
1231 Lot No. 14, containing forty 68-100 acres, appraised at twenty-five cents per acre	10 17
Lot No. 15, containing forty 68-100 acres, appraised at twenty-five cents per acre	10 17
Lot No. 16, containing forty 68-100 acres, appraised at twenty-five cents per acre	10 17
Lot No. 17, containing forty 68-100 acres, appraised at twenty-five cents per acre	10 17
Lot No. 18, containing forty 68-100 acres, appraised at twenty-five cents per acre	10 17

Third. A tract of land situated in said parish and State, township three north of range one west, and containing five lots or subdivisions, together with all the improvements, &c., thereon or thereunto belonging.

Amount brought forward	$362 19
Amount forward	$362 19
Lot No. 1 of said third tract, containing 42.50 acres, appraised at twenty-five cents per acre	10 63
Lot No. 2, containing 42.50 acres, appraised at twenty-five cents per acre	10 63
Lot No. 3, containing 42.50 acres, appraised at twenty-five cents per acre	10 63
Lot No. 4, containing 42.50 acres, appraised at twenty-five cents per acre	10 63
Lot No. 5, containing 42.50 acres, appraised at twenty-five cents per acre	10 63
Total	$415 34

1232 And, knowing of nothing further, and nothing else being pointed out to us, we here close this inventory and appraisement of the above-described property, being altogether the quantity of twelve hundred and eighty-two and 64-100 acres, amounting in the aggregate to four hundred and fifteen 34-100 dollars.

The said appraisers hereunto sign their names with me, the undersigned notary, and in presence of the subscribing competent witnesses, & on this the ninth day of September, A. D. 1871, at Alexandria, Louisiana.

THOS. J. SEVERNS.
CHAS. S. ROBINSON.

Witnesses:
C. E. BALL.
J. O. GOODE.

W. S. BRINGHURST,
Not'y Public.

Parish court, parish of Rapides.
Filed Sept. 9, 1871.

C. V. LEDOUX, *Clerk.*

Rapides Gazette Ac.

Succession of S. DUNCAN LINTON. No. 1171.

O. K. Hawley, adm'r, to Rapides Gazette, Dr.

	1871:		
1233	Nov.	To notice of application	$4 00
	June.	To advertisement of sale	24 00
June.		To tableau of debts	4 00
Sept.		To advertisement of sale	12 00
			$44 00

Alexandria, La., Sept. 8th, 1871.

Parish court, parish of Rapides, La.
Filed Sept. 9th, 1871.

C. V. LEDOUX, *Clerk.*

Petition for Sale of Property and Order for Same.

To the honorable the parish judge of the parish of Rapides:

The petition of Orestes K. Hawley, residing in the parish of Rapides, public administrator for the parish of Rapides and by law and decree of the court public administrator of the vacant succession of Stephen D. Linton, dec'd, and which estate he is administering as public administrator, with respect represents that heretofore he was proceeding to sell the property of the succession and order of the court and was enjoined and prohibited from selling the same
1234 in blocks, contrary to the constitution of the State of Louisiana.

Petitioner represents that the injunction is still pending and undecided, case No. 565, James M. Wells *vs.* O. K. Hawley, pub. adm't'r; & also petitioner represents that the estate is supposed to be insolvent, and the creditors, wherever they be, should be paid. Besides, if it were not insolvent, and there is no certainty thereof, as the solvency or insolvency of the estate depends on a question of prescription, the duty of prompt administration and settlement with the creditors and heirs, or the State if no heirs, is in the public administrator. He therefore proposes to comply with the requirements of the law to sell the property of the succession to pay the debts of the succession and not any particular creditor, but such as the court may order him to pay under a tableau and classification of the debts, and to sell the real estate, not in block-, but in small parcels, as is required in the constitution of 1868, art. 132. Thus he will comply with his duty under the law, not disobey the mandate of the court, but in reality comply with, by making sale in parcels as proposed.

1235 He therefore prays that as the parish judge of the parish court has recused himself and refused to grant any order connected with the succession that the proper authority, the district judge of the 9th judicial district, will grant an order that a survey be made of the property of the succession of Stephen D. Linton, called the Quantico plantation, and so divided by the survey appointed; that no parcel of the land divided shall contain more than fifty nor less than ten acres of land; that an inventory and appraisement of the property be ordered by the judge to be made so that each parcel shall be appraised separately from the other for the purpose of selling it according to the constitution of the State; and petitioner further prays that the court order the plantation known as the Quantico plantation be sold not in blocks, but in parts and sections, as required by article 132 of the constitution of the State of Louisiana and in conformity with law.

Prays due notice be given to counsel of absent heirs; prays for general relief.

W. B. HYMAN,
Att'y for Administrator.

1236 O. K. HAWLEY,
Public Adm'r.

Parish of Rapides, parish court.
Filed Sept. 21, 1871.

C. V. LEDOUX, *Clerk.*

I hereby accept service of the application for a sale, & in answer to the said application says there are no debts against the said est. except the mere cost of administration, & these am'ts is not sufficient to require the sale of the property.

R. J. BOWMAN,
Att'y for Absent Heirs.

Order.

By reason of the law it is ordered that the application of petitioner be granted, and that a survey be made of the property of S. Duncan Linton called the Quantico plantation by R. W. Bringhurst, parish surveyor, and that it be so divided by the surveyor that no parcel of land divided shall contain more than fifty nor less than ten acres of land.

Be it further ordered that an inventory and appraisement
1237 of this property be made by W. S. Bringhurst so that each parcel shall be appraised seperately from the other, so that it may be sold according to the requirements of the constitution of the State.

And be it further ordered that this property be sold by the public administrator in parts and sections, as required by art. 132 of the constitution.

Done and signed this the (11) eleventh day of September, A. D. 1871.

J. OSBORN,
District Judge.

Return of Public Administrator.

On the 7th day of October, 1871, the property as described in annexed printed extract was advertised for sale in the Rapides Gazette, that being the official paper for Rapides parish, said sale being advertised to take place at the court-house, in Alexandria, on Saturday, the 11th November, 1871. On the 23d day of October the advertisement of this sale was discontinued and no sale made.

O. K. HAWLEY,
Pub. Administrator.

Filed Oct. 23d, 1871.

CHAS. OWENS, *Dep'y C'k.*

1238 *Advertisement.*

Succession Sale.

STATE OF LOUISIANA, }
Parish of Rapides. }

Parish Court.

Succession of STEPHEN DUNCAN LINTON. No. 1171.

By virtue of and in obedience to an order of sale directed by the honorable the parish court, I will offer for sale, at the court-house door, in the town of Alexandria, on Saturday, the 11th day of November, '71, at 12 o'clock m., the following-described property, to wit:

The plantation or tract of land known as the "Quantico plantation," situated in the parish of Rapides, on the east side of Bayou Boeuf, about twelve miles from Alexandria, at the mouth of Bayou

Robert, bounded on the upper side by the Chambers land and on the lower side by L'Esperance plantation, together with all the buildings and improvements thereon.

Said plantation contains about eighteen hundred acres, and will be offered for sale in lots containing not less than ten nor more than fifty acres. A plat of said lots, with surveyor's bound-
1239 ar*y*-s, contents, &c., will be exhibited on the day of sale.

Terms of sale.—Cash, subject to appraisement. The said property being at present in the adverse possession of Heyman and Robinson, the purchaser will be required to pay the price before the delivery of said possession.

O. K. HAWLEY,
Public Administrator.

Public Administrator's Title to C. V. Ledoux.

STATE OF LOUISIANA, }
Parish of Rapides. }

Be it remembered that by virtue of an order of sale to me directed by the honorable the parish court in and for the parish of Rapides and State of Louisiana, in the matter of the succession of Stephen Duncan Linton, and numbered 1171 on the docket of said court, I, O. K. Hawley, public administrator of the parish of Rapides, proceeded to advertise the following-described property belonging to said succession for sale at public auction:

A tract of land about five miles from Quantico plantation,
1240 in this parish, bounded east by lands of A. Duffel's succession, west by Ralph S. Smith's land, north by land of Francoise Bird, containing twelve hundred acres, more or less, to be sold in lots of about forty acres, as per plat of division to be e-hibited on day of sale. Said property was advertised for sale after the expiration of the legal delay from the time of said notice, to wit, on the fifth day of August, 1871, by advertisement, composed in English, announcing the sale to take place at the door of the court-house in the town of Alexandria, on Saturday, the 9th day of September, A. D. 1871. Said advertisements were inserted in a newspaper published in the parish of Rapides, to wit, in the "Rapides Gazette," that being the official journal for said parish, from the 5th day of August, 1871, to the day of sale, being full thirty days from the date of the first notice given in said newspaper. Said advertisements were inserted and published on the 5th, 12th, 19th, 26th days of August, 1871, and on the 2nd & 9th of September, 1871; and, having further complied with and performed all the additional legal requisites and after the same property having been duly appraised, did expose the same at public auction, according to law, on Saturday,
1241 the 9th day of September, 1871, between the hours of 2 o'clock p. m. and 3 o'c'k p. m., first having read in an audible voice the order of sale and advertisement and announced in a similar tone of voice the conditions of the sale as being cash on the spot in U. S. Treasury notes. I then proceeded to offer the same in lots, as advertised, and in accordance with an act, No. 40, of the General

Assembly of the State Louisiana, entitled An act to provide *to provide* for carrying into effect the 132d art. of the constitution of the State, approved Feb'y 24th, 1869, said property having been caused by me to be divided into lots in accordance with said law, and at same time and place I exhibited the survey or plat of said division, with proper description of said lots, boundaries and contents, made by R. W. Bringhurst, parish surveyor, and now on file in said suit, numbered 1171, and after having offered each and every lot as per said plat separately, lot by lot, I received no bids, and therefore declared no sale for want of bidders—

When, on the 23d day of September, 1871, I again advertised said before-described property for sale on twelve months'
1242 credit or bond, according to law; by advertisements, composed in English, announcing the sale to take place at the door of the court-house, in the town of Alexandria, on Tuesday, the 17th day of October, 1871. Said advertisements were inserted and published in the official newspaper, the "Rapides Gazette," from the said 23d day of September to the day of sale, being over fifteen days from the date of the first notice given, and were inserted and published on the 23d & 30th September & 7th and 14th days of October, 1871—

When, on the said 17th day of October, 1871, about the hour of twelve o'clock m., I repaired to the place above mentioned and exposed the said property at public sale according to law, having first read in an audible voice the order of sale and the advertisement and announced in a similar tone the terms and conditions of the sale as being on twelve months' credit or bond, the purchaser to give a 12-months bond, with security to be approved by me, and with a mortgage retained on the property sold to secure its full and final payment, & again exhibited the plat of survey of the property now offered, when C. V. Ledoux, being present, bid for lots Nos.
1243 one, two, three, four, five, six, seven, & eight, as per said plat, said lots being in township No. 3 N., R. 2 west, ten cents (10c.) per acre, each lot containing $42\frac{24}{100}$ acres, or in all three hundred & thirty-seven $\frac{92}{100}$ acres, amount of said — being in all thirty-three $\frac{80}{100}$ dollars, and same purchaser bid for lots numbers nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, in township No. 2 N., R. 1 west, as per said plat, each containing $40\frac{68}{100}$ acres, or in all seven hundred & thirty-two $\frac{24}{100}$ acres, ten cents an acre, amounting in all to seventy-three $\frac{25}{100}$ dollars, and same purchaser bid for lots numbers twenty-seven, twenty-eight, twenty-nine, thirty, and thirty-one, in township No. 3 N., R. 1 west, as per said plat, each containing 42 $\frac{50}{100}$ acres, or in all two hundred & twelve $\frac{50}{100}$ acres, ten cents per acre, amounting in the aggregate to one hundred and twenty-eight $\frac{30}{100}$ dollars, each lot being cried separately and each bid being received in a like manner:

Now, therefore, in consideration of the sum bid as aforesaid and of the execution of the twelve-month bond for the same, the re-
1243½ ceipt of which is hereby acknowledged, I, O. R. Hawley, pub-

lic a-ministrator of the aforesaid parish, do now sell, convey, and deliver to C. V. Ledoux, present and accepting the same, the property thus described; to have and to hold the said described property to him, the said C. V. Ledoux, his heirs and assigns, forever.

In testimony whereof I have hereunto set my hand officially on this 21st day of October, A. D. 1871, in presence of the undersigned, competent witnesses.

O. K. HAWLEY,
Public Administrator.
C. V. LEDOUX.

Witnesses:
CHARLES OWENS.
THOM'S J. SEVERN.

Parish court, parish Rapides, La.
Filed October 26th, 1871.

CHARLES OWENS, *Dep. Clerk.*

Recorded in Sheriff's Deed Book, pages 182 to 184, October 27th, 1881.

CHARLES OWENS, *Dep. Clerk.*

STATE OF LOUISIANA:

Petition for Monition & Advertisement

To the honl. the judge of the parish court in and for the parish of Rapides:

1244 The petition of Charles V. Ledoux, a resident of your parish of Rapides, with respect represents that on the 17th day of October, A. D. 1871, at the sale of certain lands belonging to the succession of Stephen Duncan Linton, deceased, sold by O. K. Hawley, public administrator in and for the parish of Rapides, and, as administrator of said succession, your petitioner purchased the following-described property, to wit:

A certain tract of land, about five miles from "Quantico plantation," in this parish, bounded east by lands of A. Duffell's succession; west by Ralph Smith's lands, north — land of Francois Bird, containing twelve hundred and eighty-two acres, more or less, said land divided into 31 lots, as per plat of R. W. Bringhurst, parish surveyor, filed in suit No. 1171, as per order of court dated 28th of July, 1871, and directing O. K. Hawley, administrator as aforesaid, to sell said lands for cash for the payment of debts; and said property having been advertised and offered for sale according to said order and advertisement and there being no sale for want of bidders, the said lands were re-advertised, according to law, to be sold on twelve
1245 months' credit, the purchaser to give bonds and security as required by law—

When, on the 17th day of October, 1871, the day of sale as advertised, your petitioner became the purchaser of said lands, he being the highest and last bidder, and in accordance with the plat of sur-

vey made by R. W. Bringhurst, parish surveyor, for the price and sum of ten cents per acre. Your petitioner further represents that in compliance with the law and the terms and condition of sale he has executed his twelve-months bond, with security as required by law.

Wherefore he prays that your honorable court will grant and order a monition and advertisement according to law, and, after due publication had in the matter, your hon'le court will confirm and homologate said sale; and petitioner prays for general relief.

C. V. LEDOUX.

STATE OF LOUISIANA,
Parish of Rapides.

Personally appeared before me, the undersigned authority, Charles V. Ledoux, who makes oath that H. L. Daigre, parish judge
1246 in and for the parish of Rapides, has secured himself in the matter of the succession of Stephen Duncan Linton, deceased.

C. V. LEDOUX.

Sworn to and subscribed before me this 1st day of December, 1871.

J. OSBORN, *Dist. Judge.*

Let the monition and advertisement be made for thirty days, as the law requires.

Done and signed, at chambers, this 1st day November, 1871.

Parish court, parish of Rapides, La.

Filed November 1st, 1871.

CHARLES OWENS, *Dep'y C'rk.*

Monition.

STATE OF LOUISIANA,
Parish of Rapides.

Whereas Charles V. Ledoux, a resident of the parish of Rapides, Louisiana, has obtained an order from the honorable the parish court of the parish aforesaid granting him a monition, to be advertised according to law, in this parish; and whereas, by vir-
1247 tue of an order of this honorable court signed on the 28th day of July, 1871, in the succession of Stephen Duncan Linton, being No. 1171 of the probate docket of the parish court, there was adjudicated to said Charles V. Ledoux, at a public auction in the town of Alexandria, parish of Rapides, on the 17th day of October, 1871, by O. R. Hawley, public administrator and as administrator of said succession, the following described property, to wit: A certain tract of land, about five miles from the "Quantico plantation," in this parish, bounded east by lands of A. Duffell's succession, west by Ralph S. Smith lands, north by lands of Francois Bird, containing twelve hundred and eighty-two acres, more or less, and divided into thirty-one lots, as follows, to wit:

Lot- 1, 2, 3, 4, 5, 6, 7, and 8, in township No. 3 north, range 2

west, and lots 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, and 26, in township No. 2 north, range 1 west, and also lots No. 27, 28, 29, 30, and 31, in township No. 3 north, range 1 west, as per plat of survey by R. W. Bringhurst, parish surveyor, filed in said suit No. 1171, for the prrice of one hundred and twenty-eight $\frac{34}{100}$ dollars, in payment of which he has executed a twelve-
1248 months bond, with five per cent. interest from date, to wit, this 17th day of October, 1871:

Now, therefore, all persons who can set up any rights to the above-described property in consequence of informality in the order of the court under which the sale was made, or any irregularity in the appraisement, advertisement, time, and manner of sale, or any other defect whatsoever are hereby admonished and called upon to show cause, within thirty days from the first publication of this monition, why the sale of the above-described property to said Charles V. Ledoux shall not be confirmed and homologated.

Witness the Hon. John Osborn, judge, the parish judge having recused himself in the matter, this 1st day of November, A. D. 1871.

CHARLES OWEN,
Deputy Clerk.

Opposition of J. Madison Wells.

Parish Court, Parish of Rapides.

In the Matter of the Suc. of S. D. LINTON. No. 1171.

In this case now comes J. M. Wells, of said parish and
1249 State, and represents that he is a creditor of said succession, but that his claim is over five hundred dollars, which the adm'st'r refuses to acknowledge said claim, and he will be forced to institute suit in the district court, and he now appears in this court for the purpose of opposing the tableau of debt filed by said administrator.

This opponent opposes item one, claim of the State Bank; item No. 2, claim of Bank of La., and item No. 3, claim of Annie De Boyne, on the grounds that the notes upon which claims are based are barred by the pre-emption of five years.

Wherefore opponent prays that said claim be rejected, and for costs and general relief.

R. J. BOWMAN,
Att'y for Opposer.

Parish court, parish of Rapides.
Filed November 6th, 1871.

C. V. LEDOUX, *Clerk.*

Opposition of Coleman M. Calvit.

1250 Parish Court, Parish — Rapides. November Term, A. D. 1871.

Succession of STEPHEN D. LINTON. No. 1171.

Your petitioner, Coleman M. Calvit, shows your court that he

opposes the homoologation of the tableau of debts filed in your court by O. K. Hawley, public administrator have in his charge the above numbered and entitled succession, and that claim of petitioner as a privileged creditor of said estate is for a sum beyond the jurisdiction of your court to pass upon.

Wherefore he prays that the tableau of debts owing by the above-entitled succession and the opposition filed thereto by petitioner be transferred by order of your court to the district court for trial and for general relief.

J. G. WHITE,
R. A. HUNTER, *Attorneys.*

Parish court, parish of Rapides, La.
Filed November 7th, 1871.

CHARLES OWENS,
Dep'y Clerk.

Opposition of Mary P. Linton and Charlotte B. Linton, Widow Surget.

To the honorable the judge of the parish court for Rapides parish, State of Louisiana:

1251 The opposition of Mary P. Linton and of Charlotte B. Linton, Widow Surget, domiciled in the State of Mississippi and residing in Bordeaux, France, to the monition obtained by Charles V. Ledoux, alleging himself to be a purchaser of certain lands described in the annexed advertisement, belonging to the late Stephen Duncan Linton, shows the court that they are the sisters and sole heirs of said deceased, and are entitled to the whole of his estate after his just debts are paid. They further show the court that their deceased brother never resided in the parish of Rapides and never had or claimed to have his domicil therein, although he was a resident and citizen of Louisiana from early manhood to his death, and hence all the proceedings of your court relative to his succession are null and void by reason of want of jurisdiction of the same.

Opponents further shows that their deceased brother had property in several parishes of your State, where he resided, and that the court of his domicil only can legally open his succession. The public administrator of Rapides parish is therefore without au-
1252 thority to sell the property described in the monition, and they pray its dismissal and that this opposition to its homologation be sustained. In addition to this fundamental cause of nullity, opponents allege that this sale is made irregularly; that this land was appraised on an inventory at $—, but when the public administrator took charge of the succession of their brother he had an inventory taken of this land, and its appraisement was $36.00, yet he has adjudicated it — a sale pretended to be public for $128.34; that the public administrator is himself the real purchaser.

These opponents accept the succession aforesaid, with benefit of inventory, expressly, and hence pray the monition be not homologated.

T. C. MANNING,
Att'y for Opponents.

Parish court, parish of Rapides.
Filed December 1st, 1871.

CHARLES OWEN,
Dep'y Clerk.

Opposition of William Morris.

Parish Court, Rapides Parish.

Succession of S. DUNCAN LINTON.

1253 LOUISIANA:

Opposition of William Morris.

To the honorable the judge of the parish court, holding in and for the parish of Rapides, Louisiana:

The petition of William Morris, a resident of your said parish, with respect shows that he is a creditor of the succession of S. Duncan Linton in the sum of six hundred dollars, with legal interest from January 1st, 1856, which has been duly acknowledged from time to time, but never paid; that a tableau of debts has been filed in said succession, numbered and styled No. 1171, succession of S. Duncan Linton, for administration, and that your opponent's claim was not recognized thereon; that he has therefore instituted a suit in the honorable the district court to establish his said demand contradictorily with Orestus K. Hawley, administrator of said succession.

Wherefore your petitioner prays that due notice of this opposition be given, and that the tableau presented by said administrator be not approved and homologated until his said suit now pending in the district court be finally decided. He prays that his
1254 rights in meantime in this court be preserved, and prays for all further necessary orders and for general and equitable relief.

H. L. LASEE,
Att'y for Opponent.

The parish judge being recused, let this petition of opposition be filed and due notice given.
Done and signed December 5th, 1871.

J. OSBORN,
District Judge.

Notice hereof accepted and all service waived and time waived.
Alexandria, La., Dec. 5th, 1871.

O. K. HAWLEY, *Adm'tr'r.*

Parish court, parish Rapides, La.
Filed December 5th, 1871.

CHARLES OWENS,
Dep'y Clerk.

Petition of Mary P. Linton and Charlotte B. Linton, Widow Surget, to be Placed in Possession of Succession.

Succession of S. D. LINTON.

1255 To the honorable the judge of the parish court for Rapides parish, State of Louisiana:

The petition of Mary P. Linton and Charlotte B. Linton, Widow Surget, the former a citizen of Louisiana and the latter of Mississippi, and both temporary residents in France, shows the court that they are the sole heirs of their brother, S. Duncan Linton, and have accepted his succession with benefit of inventory and appointed a special attorney to represent them.

They are informed that certain parties have opened or attempted to open said succession in your hon. court. They now show the court that the deceased was never at any time a resident of your parish, and that your court has hence no jurisdiction of that succession. The deceased constantly resided in Louisiana, though his death occurred while temporarily sojourning in France, having been up to the close of the war a resident of East Baton Rouge, and afterwards, to the time of his death, of New Orleans. They pray the court to dismiss all proceedings on the docket touching said succession as without jurisdiction, and to amend the order appointing the public administrator to administer the same.

1256 They pray for service hereof upon said officer, for all orders and general relief.

THOMAS C. MANNING,
Special Attorney for Petitioners.

Parish court, parish of Rapides, La.
Filed January 9th, 1872.

CHAS. OWEN, *D'y Clerk.*

Citation.

STATE OF LOUISIANA:

Parish of Rapides, Parish Court.

Succession of S. D. LINTON. No. 1171.

To O. K. Hawley, pub. administrator of the parish of Rapides:

You are hereby cited to appear in the office of the clerk of said court, in the town of Alexandria, in the parish aforesaid, and comply with the demands contained in the petition of Mary P. and Charlotte B. Linton, of which a copy accompanies the citation, or deliver your answer thereto in writing in ten days after the service hereof, with one additional day for every 10 miles from your residence and the office of said clerk.

1257 [SEAL.] Witness the Honorable H. L. Daigre, judge of said court, this 12th day of January, A. D. 1872.

C. P. LEDOUX, *Clerk.*

The above citation, with a certified copy thereof and of petition, were received by the sheriff of the parish of Rapides the 12th day of January, A. D. 1872.

JOHN DE LACY, *Sheriff.*

Personal Service.

On the 12th of January, A. D. 1872, I made service of the copies of petition and citation above mentioned by delivering them to O. K. Hawley, public administrator, in person.

JOHN DE LACY, *Sheriff.*

Parish court, parish of Rapides.
Returned and filed January 12th, 1872.

CHAS. OWENS, *D'y Clerk.*

Application to Take the Testimony of J. Madison Wells before the Clerk.

In the Succession of S. D. LINTON.

MARY P. LINTON and C. B. LINTON
vs.
1258 O. K. HAWLEY, Adm't'r. } No. 1171.

In this case the defendant comes and represents that J. M. Wells, of said parish, is a material witness on the part of defendant, upon whose testimony the def't relies, and he is desirous of taking the testimony of said witness, on a day and hour to be fixed, before the clerk of the district court. Wherefore he prays that the said witness be duly summoned to appear before the said clerk at said time, & that the pl'ff-, through their att'y, have at least two days' notice of the time and place for taking said testimony.

R. J. BOWMAN,
Att'y for Def'ts.

Parish court, parish of Rapides, La.
Filed January 20th, 1872.

CHARLES OWENS, *D'y Clerk.*

This application being considered, it is ordered that next Wednesday at 12 o'clock be fixed the day and hour for taking the testimony of said witness, and that the att'y of pl'ffs be duly notified of said appointment January 20th, 1872.

C. V. LEDOUX, *Clerk.*

1259 *Notice to Plaintiffs' Attorney.*

Parish Court, Parish of Rapides.

Succession of STEPHEN D. LINTON. Nos. 1171.

State of Louisiana to T. C. Manning, attorney for Mary P. and Charlotte B. Linton:

Whereas O. K. Hawley, public administrator, has applied to me

to take the testimony of J. M. Wells, to be used in evidence on the trial of this cause—

You are hereby notified that I have appointed Wednesday, the 24th day of January, A. D. 1872, as the day on which I shall take said testimony, in writing, at my office, in Alexandria, in the parish of Rapides, at 12 o'clock m.

C. V. LEDOUX,
Clerk 9th Judicial District Court and ex Officio Clerk of the Parish Court in and for Parish of Rapides.

Application of P. B. Fouke, Public Administrator of the Parish of Orleans, to be Appointed Administrator of S. Duncan Linton's Estate.

To the honorable the judge of the second district court for the parish of Orleans:

1260 The petition of P. B. Fouke, public administrator of this parish, respectfully represents that S. Duncan Linton, late of this parish, died in Paris, France, about the 18th day of October, 1867, leaving no heirs or wife in the State of Louisiana entitled to administer his estate and without leaving a last will and testament; that his succession is vacant and ought to be administered, and that he left property and interest in this State.

Wherefore petitioner prays that he may be appointed to administer and — confirmed in his administration of said succession according to law, in such case made and provided, and he prays for all necessary orders in the premises from time to time.

(Signed) P. B. FOUKE,
Public Administrator,
Per WM. GRANT, *Att'y.*

William Grant, being duly sworn, says that S. Duncan Linton died in Paris, France, about the 18th day of October, 1867, and that the facts stated in the foregoing petition are true.

(Signed) WM. GRANT.

Sworn to before me February 28th, 1872.

(Signed) JOE. GAUDEL,
Dep'y Clerk.

Order.

1261 Let petitioner's application for letters of administration on this estate be ordered according to law.

New Orleans, February 28th, 1872.

(Signed) L. DUVIGNEAUD, *Judge.*

A true copy.

JOE GAUDEL,
Dep'y Clerk.

Notice.

Second District Court for the Parish of Orleans.

Succession of S. DUNCAN LINTON. No. 35299.

Whereas Ph. B. Fouke, public administrator, has petitioned the court for letters of administration on the estate of the late S. Duncan Linton, deceased intestate, notice is hereby given to all whom it may concern to show cause within ten days why the prayer of the said petitioner should not be granted.

By order of the court:

M. O. TRACY, *Clerk.*

Feb'y 29th, 1872.

N. O. Republican.

Motion to Have a Judge ad Hoc Appointed to Try the Case.

1262 Parish Court, Parish of Rapides. April Term, 1872.

Succession of STEPHEN D. LINTON. No. 1171.

On motion of A. Cazabat, of counsel for C. V. Ledoux, application for monition herein, and upon showing and suggesting to the court that he is entitled to the trial of the case, his honor the parish judge having recused himself, and Mr. McGuirsey, attorney-at-law, to whom the case had been refer-ed, having also declined to try the same, it is ordered that Robert P. Hunter, att'y-at-law, be now selected and appointed according to law to try this case.

Parish court, parish Rapides, La.

Filed April 3d, 1872.

CHARLES OWEN,
Dep'y Clerk.

Application to Take the Testimony of J. Madison Wells Before the Clerk.

In the Succession of S. DUNCAN LINTON.

MARY P. LINTON & C. B. LINTON
vs.
O. K. HAWLEY, Adm'r.
} No. 1171. Parish Court, Pa. Rapides.

In this case the defendant comes and represents that J. Madison Wells, of said parish, is a material witness on the part
1263 of the defendant, upon whose testimony the def't relies, and he is desirous of taking the testimony of said witness on a day and hour to be fixed, before the clerk of the district court; wherefore he prays that the said witness be duly summoned to appear before the said court at said time, and that the pl'ffs, through their att'y, have at least two days' notice of the time and place for taking said testimony.

R. J. BOWMAN, *Att'y.*

This application being considered, it is ordered that next Wednesday, the 10th day of April, 1872, at 12 o'c'k m., be fixed as the day and hour for taking the testimony of said witness, and that the attorney of pl't'ff be duly notified of said appointment.

April 6th, 1872.

C. V. LEDOUX, *Clerk.*

Filed April 6th, 1872.

CHARLES OWENS,
Dep'y Clerk.

Notice to Plaintiffs' Attorney.

Parish Court, Parish of Rapides.

Succession of STEPHEN D. LINTON. No. 1171.

State of Louisiana to T. C. Manning, attorney for Mary P. & C. B. Linton:

1264 Whereas O. K. Hawley, public administrator, has applied to me to take the testimony of J. M. Wells to be used in evidence on the trial of this cause;

You are hereby notified that I have appointed Wednesday, the 10th day of April, A. D. 1872, as the day on which I shall take said testimony in writing, at my office, in Alexandria, in the parish of Rapides, at 12 o'clock m.

C. V. LEDEAUX,
Clerk 9th Judicial District Court and ex Officio Clerk of the Parish Court in and for Parish of Rapides.

Duly served a copy of the within notice on T. C. Manning, atto'y, in person this 6th day April, 1872.

JOHN DE LACY, *Sheriff.*

Returned, filed April 6th, 1872.

CHARLES OWEN,
D'p'y Clerk.

Sheriff fee, $1.00.

The taking of the testimony of J. Madison Wells, as ordered within, delayed at the request of T. C. Manning on account of illness and unable to attend as notified.

C. V. LEDOUX, *Clerk.*

1265 *Application for a Commission to Take the Testimony of Mary P. Evans & Mrs. John Perkins.*

In the Matter of the Succession of S. D. LINTON, MARY P. & CHARLOTTE B. LINTON, Intervenors. No. 1171.

In this case the administrator prays that a commission issue to any judge or justice of the peace in and for the parish of Orleans and city of New Orleans and State of Louisiana to take the testi-

mony of Mary P. Evans and Mrs. John Perkins, of said city, to be offered in evidence on the trial of the above-entitled succession.

Int'y 1. Were you or were you not acquainted with S. D. Linton, deceased? If yea, how long did you know him?

Int'y 2. Were you or were you not related to the said Linton by marriage? If yea, please state what that relationship was and when it began.

Int'y 3d. Did or did not said Linton ever reside in the parish of East Baton Rouge? If yea, at what time?

Int'y 4th. Did or did not said Linton reside in the parish of East Baton Rouge from about 1859 until the spring or summer of 1862?

1266 Interr'y 5th. Did or did — the said Linton ever move from said parish of East Baton Rouge? If yea, to what parish did he move?

Inter'y 6th. Did or did not said Linton move from said parish of East Baton Rouge to the parish of Rapides? If yea, about what time?

Int'y 7th. If you answer the last interrogatory affirmatively, did or did not the said Linton bring with him to said parish of Rapides his family with their household furniture, servants, bedding, &c.?

Int'y 8th. How long did said Lintons continue to reside in the parish of Rapides and what time did he leave said parish and State of Louisiana?

Int'y 9th. To what place did the said Linton go, or leave said parish of Rapides? Did he or did he not go to Houston, in Texas, and how long did he remain in said State of Texas?

Int'y 10th. Did or did not said Linton ever move from the State of Texas? If yea, to what country did he go?

Int'y 11th. Did or did not said Linton on leaving Texas
1267 go to Matamoras, in Mexico, and from thence to France?

Int'y 12th. If you answer that the said Linton went to France, at what time did he arrive there, and did he or did he not remain in France until his death?

Int'y 13th. In what year and month did he die?

Int'y 14th. Did or did not said Linton keep house with his family in France, and was not he and his family thus residing in and keeping house in France at the time of his confinement in the hospital of Dr. Blanche in 1866 or until his interdiction?

Int'y 15th. Did or did not Mr. Linton ever return to the State of Louisiana after leaving it in Aug., 1863, except on a short visit in Nov. & Dec., 1865?

Int'y 16th. What were your means of learning the facts embraced in the foregoing interrogatories? Were you or were you not with Mr. Linton during the time embraced by said facts?

R. J. BOWMAN,
Atto'y for Adm'st'r.

Parish court, parish of Rapides.
Filed Sept. 12th, 1872.

C. V. LEDOUX, *Clerk.*

The foregoing petition being considered it is therefore or-
1268 dered that commission issue as prayed.

H. L. DAIGRE, *Par. Judge.*

Sept. 13th, 1872.

Notice to X Interrogatories.

STATE OF LOUISIANA, }
Parish of Rapides. }

Parish Court.

Succession of STEPHEN DUNCAN LINTON. No. 1171.

To T. C. Manning, attorney of Mary P. Linton & Charlotte B. Linton, Widow Surget:

Whereas the administrator in the above-entitled succession has applied to this court for a commission to take the testimony of Mary P. Evans and Mrs. John Perkins, witnesses residing —, certified copy of which is hereto annexed, you are therefore hereby notified to add within three days from the service hereof whatever questions you wish on your part to have put to said witnesses.

Witness the Honorable H. L. Daigre, judge, and given under my hand and seal of said court, at Alexandria, the 17th day of September, A. D. 1872.

CHAS. OWEN,
Dep'y Clerk.

Received the within commission, with a copy of same, and a copy of interrogatories attached, on the 17th day of September,
1269 1872, and on same day, month, and year duly served the above-mentioned on T. C. Manning, att'y.

JOHN DE LACY, *Sheriff.*

Ret'd & filed Sept. 17th, 1872.

CHAS. OWENS,
Dep'y Cle'k.

Cross-Interrogatories.

Parish Court of Rapides.

Succession of S. DUNCAN LINTON. No. 1171.

The undersigned, attorney in fact and at law of Mary P. Linton and Charlotte B. Linton, reserves all objections to the form and manner of executing the commission for the testimony of Mary P. Evans and Mrs. John Perkins, as well as all objections to the admissability of the testimony, and propounds the following cross-interrogatories:

Cross-interrogatories to Mrs. Mary P. Evans:

1st X Int'r. Was not Duncan Linton residing in the city of New Orleans in 1861 & 1862 until up to or after the capture of that place by the U. S. forces?

2nd X Int'y. If you have answered the 5th interrogatory, state now when he moved from East Baton Rouge, and if he did not go to New Orleans to reside when he left that parish, and if he
1270 did not actually reside in New Orleans prior to and at the time of breaking out of the war?

3d — Int'r. Did not your husband, Stephen Duncan Linton, and yourself have an establishment in New Orleans, keep house there, and have your family, your furniture, and your equipage there, both before and after the war?

4th X Int'r. Did he have a residence anywhere else at that time or keep house elsewhere? State the time when you and he thus lived in New Orleans.

5th X Int. If in your answer to 7th interrogatory you say that Linton brought to Rapides parish his household furniture, bedding, &c., state now if he carried there the furniture from the New Orleans house. Was not the furniture that he carried to Rapides merely such articles as refugees would need?

6th X Int'r. Did Mr. Linton go to Rapides with the intention of remaining there permanently—of making it his home and your home the rest of your life?

7th X Int'r. Do you not know that Mr. Linton went to
1271 Rapides parish merely to get out of the way of the Yankees and the armies—away from the theater of war?

8th X Int'r. Was not the town of Baton Rouge attacked before or shortly after you left by the Confederate troops under Gen'l Breckinridge, and was not the apprehension of suffering inconvenience, loss, and annoyance the reason of Mr. Linton's leaving that locality or neighborhood and coming to Rapides?

9th X Int'r. You are asked in the 8th interrogatory, "How long did Linton reside in Rapides parish?" I now ask you if he ever resided there, in the sense of establishing it as his home. If he had made it his home, would you not have known it? Could anything be further from his thoughts and your wishes or more repugnant to his wishes and intentions than the making Rapides his and your permanent home? Did he ever do it?

10th X Int'r. Did not Mr. Linton come to Rapides as a temporary makeshift to get out of the tract of war, and leave it for Texas when an invasion of the Red River Valley was thought to be imminent or probable?

1272 11th X Int'r. Did not Mr. Linton return to New Orleans shortly after the war ended in the summer of 1865?

12th X Int'r. Did Mr. Linton have a family mansion on his plantation in Rapides parish? What sort of a house did you stay in while on his plantation in Rapides? Did he ever speak of that as his permanent home?

13th X Int'r. Had not Mr. Linton ample means before the war? Has it not become usual for families of affluence to visit the continent of Europe and often remain their several years?

14th X Int'r. Did Mr. Linton when he went to France denationize himself and become a subject of that country?

The above X interrogatories are also propounded to the other witness, & this additional X int'r. is addressed to her, she being described as Mrs. John Perkins.

15th X Int'r. What is the name of your husband, and where does he live?

MANNING,
Att'y for the Linton Heirs.

Parish court, parish of Rapides, La.
Filed September 20th, 1872.

CHAS. OWEN,
Deputy Clerk.

1273 *Commission to Take Testimony.*

STATE OF LOUISIANA, }
Parish of Rapides. }

Parish Court.

To any judge or justice of the peace for the parish of Orleans, State of Louisiana, Greeting:

Know ye that we, reposing confidence in your prudence and fidelity, do by these presents give unto you authority diligently to examine Mary P. Evans & Mrs. John Perkins in a certain suit now pending in our court, entitled succession of Stephen Duncan Linton, on the part of administrator of said succession, in which Mary P. Linton & Charlotte B. Linton oppose said administration:

Therefore we desire you, at certain times and places by you to be appointed for that purpose, to cause the said witnesses to come before you; that you then and there examine them upon their oaths, first duly administered according to law; that you reduce the said examination to writing, and when you shall thus have taken the same that you send it closed up under your seal to us, in our said court, at the court-house in the town of Alexandria, parish
1274 of Rapides, on or before the 1st Monday of December, 1872; and have you then and there this commission.

Witness the Honorable H. L. Daigre, judge of said court, this 24th day of September, 1872.

CHARLES OWEN,
Deputy Clerk.

Anwers to Interrogatories.

Be it remembered that on this 12th day of November, A. D. 1872, personally appeared before me, Chas. M. Emerson, judge of the third district for the parish of Orleans, Mrs. MARY P. EVANS, who, being first duly sworn according to law to tell the truth, the whole truth, and nothing but the truth, answers the *the* interrogatories propounded her in the foregoing and attached commission as follows, viz:

To the 1st interrogatory she saith: I was acquainted with S. D. Linton about 18 years.

To the 2nd: I was his wife, and was married to him in the parish of East Baton Rouge, on my father's estate.

1275 To the 3d: After my marriage we went into possession of four homes, among which we equally divided each year—the early summer at East Baton Rouge, the latter part across the lake, the winter in New Orleans, and the spring on the Red River place.

To the 4th: He did not. We were in Europe and Cuba during nearly the whole of the lapse of time mentioned.

To the 5th: He only moved from the parish of East Baton Rouge in the manner I have stated above.

To the 6th: After the destruction of Baton Rouge by the United States forces we moved to the Red River estate, in the parish of Rapides.

To the 7th: He did.

To the 8th: I think from the early spring until the end of the summer.

To the 9th: We passed through Houston, Texas, on our way to Matamoras, there waiting for an English steamer.

To the 10th: We went from Matamoras to Cuba.

To the 11th: He did go from Texas to Matamoras, in Mexico, from thence to Cuba, and from thence to France.

To the 12th: He arrived in France some time in 1863, as well as I can now remember, and he made it his home until his death.

1276 To the 13th: In December, 1867.

To the 14th: Yes.

To the 15th: He did not.

To the 16th: I was with him.

To the cross-interrogatories she answers as follows:

To the first cross-inter. she saith: He was passing the winter here, as usual, in our city residence, and was here detained after the capture of New Orleans until Oct. of the same year.

To the 2d cross: We returned from Europe at the end of 1860, foreseeing the war, and at the breaking out thereof were in our winter residence in New Orleans.

To the 3d cross: Yes; it was one of the four homes that I have before mentioned.

To the 4th cross: Yes; three others. During the winter months we lived in New Orleans.

To the 5th cross: The house in Rapides parish was furnished with heirloom furniture, given to Mr. Linton by his mother upon his leaving college, and was never allowed to be removed from there.

To the 6th cross: When we were driven by the U. S. Army from the East Baton Rouge residence we did not know that we

1277 should ever reside anywhere else than on the Rapides estate.

To the 7th cross: We went to Rapides parish simply because our home in Baton Rouge was broken, and Mr. Linton went to Rapides to protect his interest as well as for the comfort of his family.

To the 8th cross: I have given above Mr. Linton's motives for

moving to Rapides as to the attack on Baton Rouge by Gen'l Breckenbridge. I do not remember the particular date.

To the 9th cross: So far as our wishes and intentions are concerned, I may say that we were compelled then to do much that was disagreeable, and expected to have to endure such sacrifice, perhaps forever, as a consequence of the horrors of war.

To the 10th cross: I have before stated how we went to Rapides, having had previously a positive assurance from Gen'l Banks that he was not going to invade that part of the country.

To the 11th cross: He was in New Orleans in November, 1865, for about one month, when he returned to France.

1278 To the 12th cross: The house was a plantation-house, and at the time of his marriage was his only home.

To the 13th cross: Mr. Linton had ample means before the war. It had become usual for families of affluence to visit Europe and remain there several years at a time.

To the 14 cross: He did not.

MARY P. EVANS.

Sworn to and subscribed this 12th day of November, 1872, before me—

CHAS. M. EMERSON,
Judge of the Third District Court for the Parish of Orleans.

The witness, Mrs. John Perkins, named in the commission, could not be produced and her evidence was therefore not taken.

CHAS. M. EMERSON,
Judge District Court for the Parish of Orleans.

Returned and filed Nov. 18th, 1872.

C. V. LEDOUX, *Clerk.*

Application of J. Madison Wells to be Appointed Administrator.

In the Matter of the Succession of S. D. LINTON.

1279 In this case now comes J. M. Wells, Jr., and represents that he has been appointed public administrator of the parish of Rapides, and duly commissioned in place of O. K. Hawley, in his capacity of public administrator; was appointed and recognized as administrator of the above succession.

Wherefore petitioner prays that he be duly recognized as administrator of the above-entitled succession in lieu of O. K. Hawley, late administrator of said succession, in virtue of his office of public administrator, and he be hereby permitted to make himself a party to contest of the heirs of said Linton to set aside the administrator of said succession by your hon. court, and also make himself a party to all other proceedings in said succession.

R. J. BOWMAN,
Att'y for Public Adm'r.

Parish court, parish Rapides, La.
Filed July 7th, 1873.

CHAS. OWEN, *Dep'y Clerk.*

Application for a Commission to the Consul of the United States at Bordeaux, France, to Take the Testimony of Eustace Surget.

1280 Succession of STEPHEN DUNCAN LINTON. No. 1171.

To the honorable the judges of the parish court for Rapides parish, Louisiana:

The heirs of S. D. Linton, heretofore made parties to these proceedings, prays the court to issue a commission to the consul of the United States at Bordeaux, France, directing and empowering him to take the testimony of Eustace Surget, whom they allege is an important witness in their behalf, and who resides at that place, in answer to tho following interrogatories, a copy of which they pray may be served upon the public administrator or his attorney of record with due notice, and that said commission be returnable to the 3rd Monday of January next to your court:

1st Interrogatory. Mention your name and present residence.

2nd Inter. Were you acquainted with the late S. Duncan Linton, and how long have you known him?

3d. Did or did not he ever reside in the parish of Rapides, State of Louisiana, U. S., as his home?

1281 4th Inter. Where did he live at commencment of the late civil war? If you say at New Orleans, did he or not have or occupy a residence there with his family?

5th Inter. Did he or not continue to reside there with his family after the commencement of that war; and, if yea, how long?

6th Inter. Did he or not leave New Orleans on or before its capture by the Army and Navy of the United States; and, if yea, when did he go?

7th Inter. Did he have property, lands, and slaves in some of the country parishes of Louisiana; and, if yea, in what ones?

8th Inter. Were you or not in the parish of Rapides, La., during the years 1862 and 1863 and 1864; and, if yea, in what capacity?

9th Inter. Did you or not see and converse with S. D. Linton in Rapides parish, La., during any of those years? And, if yea, state the time.

10th Inter. Were you or not sufficiently intimate with him for him to converse with you freely and unreservedly about his
1282 business, his intentions, and his future movements? Did he or not converse with you about these?

11th Inter. Did he or not come to Rapides parish, La., with the intention of remaining there and adopting it as his home?

12th Inter. How long did he remain there, and did he or not take with him when he left any portion of his property; and, if yea, what part of it, and where did he go with it?

13th Inter. Did he or not ever say to you that he had come to

Rapides parish, La., with the intention of remaining, or as a refugee?

14th Int'y. Were you or not ever on his plantation in that parish while he and his family were there; and, if yea, in what sort of house was he living?

15th Int'y. Did he or not ever return to that parish afterwards; if nay, how long time elapsed before his death, and where did he die?

16th Int'y. Did he or not return to the United States after the war; if yea, where did he go? In what city, town, or parish, or State?

1283 17th Int'y. Did you or not see him and converse with him after the war; and, if yea, where?

18th Int'y. What place in Louisiana was his domicil at the time you thus saw and spoke with him?

19th Int'y. Did or did not his widow return to Louisiana after his death?

20th Int'y. Did or did not he ever have a domestic establishment or mansion in Rapides parish, La., wherein he resided as a home or other than a temporary stopping place?

21st Int'y. State any other matters within your knowledge concerning the residence or domicil of the deceased in Louisiana, or any fact thereof, as if you were specially interrogated thereto.

MANNING,
Att'y for Heirs of S. D. Linton.

Parish court, parish Rapides, La.
Filed Nov. 14th, 1873.

CHAS. OWEN,
Dep'y Clerk.

Let a commission issue as prayed for and according to law.
Done and signed at chambers this 14th day of November, 1873.

C. V. LEDOUX,
Parish Judge.

1284 *Cross-Interrogatories.*

Succession of S. D. LINTON.

Heirs of S. D. LINTON
vs.
PUBLIC ADMINISTRATOR. } No. 1171.

In this case the administrator accepts service of the interrogatories propounded to Eustace Surget, of Bordeaux, in the Kingdom of France, and propounds the following cross-interrogatories:

Cross-int'y 1st. How long have you resided in France?

Cross-int'y 2nd. How long have the plaintiffs, Mrs. Surget and Mary A. Linton, resided in France?

Cross-int'y 3d. Did or did not S. D. Linton come to the parish of

Rapides with his family in the summer of 1862 and remain there until June, 1863, *eighteen hundred & sixty-three.*

Cross-int'y 4th. If in answer to the 12th interrogatories you say that S. D. Linton took with him when he left the parish of Rapides any portion of his property, please state whether he took with him his stores, teams, and wagons.

Cross-int'y 5th. To what State or country did the said Linton go on leaving the parish of Rapides? Did he or did he not go directly to Texas, from thence to Matamoras, and from thence to
1285 France, and did he not take with him his family?

Cross-int'y 6th. If you answer to the 4th cross-interrogatory that Linton took with him his slaves, wagons, and teams on leaving Rapides, did he not sell all of the said slaves in Texas and his wagons and teams either in Texas or Mexico?

Cross-int'y 7th. Did or did not said Linton arrive in France in the summer or early in the fall of 1863?

Cross-int'y 8th. If, in answer to the 19th interrogatory, you say that the widow of S. D. Linton returned to Louisiana after his death, please state from what country she returned. Was or was it not from France? Was or was not she and her husband living in France at the time of his death?

Cross-int'y 9th. If, in answer to the 16th interrogatory, you say that Mr. Linton returned to Louisiana after the war, was or was not said return in the middle or latter portion of October, 1865, and did he or did he not leave the State of Louisiana in the latter part of November or beginning of December of the same year—
1285½ 1865—for New York and go from thence to France?

Cross-int'y 10th. If, in answer to the 18th interrogatory, you say that Mr. Linton had a domicil in Louisiana after the war, please state the facts and circumstances which constitute that domicil.

Cross-int'y 11. How near to each other did the plaintiffs and Mr. Linton reside in France? Did not Mr. Linton have a domestic establishment in that country before his coming to Louisiana in 1865, after his return from that visit?

R. J. BOWMAN,
Att'y for Administrator.

Filed Nov. 14th, 1873.

CHAS. OWEN,
Dep'y Clerk.

Opposition of Charlotte B. Linton, Widow Surget, and Mary P. Linton, Wife of Eustace Surget, to the Appointment of J. M. Wells, Jr., to Administer said Suc., &c.

Succession of S. DUNCAN LINTON. No. 1171.

To the honorable the judge of the parish court of Rapides parish, Louisiana:

1286 The petition of Charlotte B. Linton, Widow Surget, a citizen — Mississippi, and of Mary P. Linton, wife of Eustace Surget,

and her said husband, who joins herein, authorizing her, both citizens of Louisiana, now tempor-*ial*ly residing in France, shews the court that they oppose the appointment of James M. Wells, Jr., to administer the succession of their deceased brother, S. Duncan Linton, in his capacity of public administrator of Rapides parish for their reasons previously set forth in their opposition filed in these proceedings January 9th, 1872, and they pray the court to dismiss the application for want of jurisdiction of the court over said succession, because it has been opened in the parish of Orleans, which was the domicil of the deceased at the time of his death.

Should this opposition not prevail they thus pray the court to permit them, as sole heirs, to accept said succession with benefit of inventory; and if the parish of Rapides shall be adjudged to be the proper place for the mortuary proceedings to be conducted, then their attorney, Thomas C. Manning, whom they have specially ap-
1287 pointed to represent them, by procuration duly executed, shall take charge of said succession in their name as heirs, and that your petitioners be recognised as said heirs and in that capacity the property be delivered to them, subject to such claims as the creditors may lawfully have against it.

Petitioners renew their prayer that the appointment heretofore made of O. K. Hawley, public administrator, to administer this succe be annulled, allege that Hawley is dead, and pray for all needful orders.

MANNING,
Special Att'y of Peti'rs & Opponents.

Filed January 19, 1875.

CHAS. OWEN, *Dep. Cl'k.*

Answer of Public Administrator.

Succession of S. D. LINTON.

CHARLOTTE B. LINTON
vs.
O. K. HAWLEY, Public Adms.

In this case the public administrator, J. M. Wells, Jr., comes and, in answer to the petition of Charlotte B. Linton — Mary P. Linton, claiming to be beneficiary heirs of S. D. Linton on the ground
1288 that the suit to annul the proceedings of this court for want of jurisdiction is inconsistent with and cannot be cumulated with an application to be appointed administratrix, *and* prays that they be made to elect which of said grounds they will select as the basis of their suit, and, on failure to do so, that said suit be dismissed.

In the event of the foregoing exception being overruled defendant denies generally and specially each and every allegation therein contained, except that which is hereinafter admitted. Further answering, defendant alleges that said suc. of Linton was opened in said parish about 1868 and an application made for letters of ad-

ministration by Calvit, and after a contest of several years O. K. Hawley, public administrator, who became an applicant in 1870, was appointed administrator.

That the present plaintiffs never questioned the legality of said proceeding until 1872, long after said appointment had been made; that the said Hawley resigned his office of public administrator in 1873, when defendant was appointed & made a party to this suit as administrator.

1289 Defendant, further answering, alleges that the last place of residence the said Linton had in the State of Louisiana was in the parish of Rapides; that at the time of his death and long prior thereto he had no domicil in the State of Louisiana, but a resident of the Empire of France, and that the entire immovable property at the time of his death was and is now in the said parish of Rapides, where his was property opened in said parish of Rapides. Defendants, further answering, allege- that the said — have alleged that the suc. of S. D. Linton is insolvent, and being insolvent they have no interest in its administration or any right to interfere. Wherefore def't prays that their said demand be rejected with costs.

R. J. BOWMAN,
Att'y for Pub. Adm'tr.

Filed January 21, 1875.

CHAS. OWENS, *Dep'y Clerk.*

Note of Testimony Offered for Linton Heirs.

Succession of STEPHEN DUNCAN LINTON, Deceased.

Testimony of R. H. Carnal and E. M. Wells. See page — of this transcript.

1290 Testimony of William Polk and N. C. Weems. See page —.

Testimony of T. C. Manning in 1871. See page —.

Depositions of Eustace Surget, taken before United States consul in France. See page —.

Power of attorney executed by Stephen Duncan Linton to P. H. Morgan, dated Nov. 23, 1865. See page —.

Power of attorney from Linton heirs to T. C. Manning, dated October 10, 1871. See page —.

Testimony for Public Administrator.

Offered application of C. M. Calvit to be appointed administrator, marked "C." See page — of this transcript.

Opposition of John A. D. Blanc, marked "D." See page —.

Opposition of Eli Bush, marked "E." See page —.

Opposition of S. H. Kennedy, marked "F." See page —.

Opposition of O. K. Hawley, marked "G." See page —.

Judgement, marked " H." See page —.

1291 Testimony of J. Madison Wells, taken for public administrator—taken in chief. See page —.

Testimony of Mrs. Evans, taken by commissions. See page —.

In rebuttal.

X examination of J. Madison Wells, taken on same occassion as his examination-in-chief. See page —.

Testimony closed Jan'y 21st, 1875.

CHAS. OWEN, *Dep'y Cl'k.*

Succession of STEPHEN D. LINTON. No. 1171.

Testimony taken to be read in evidence in this suit and other suits in which said succession is a party in presence of the counsel named below.

REUBEN A. CARNAL, being duly sworn, says he knew the late Stephen Duncan Linton slightly. Witness is a resident of Rapides parish; was born here. I have lived here all my life, and am now 42 years old. The deceased never lived in Rapides parish, that the witness knows of. Witness knows the plantation that deceased owned in this parish called Quantico.

1292 It is 3½ or 4 miles from witness' own plantation. If deceased had ever lived on that plantation witness must have known it, since it was in his immediate neighborhood. Linton occasionally came up to Rapides and went to his plantation, but stayed not more than 8 or 10 days at a time. He did not come often; not more than once a year.

X examined by counsel for public administrator:

Witness was here during the war; did not remain during the whole time; went to Texas December, 1864; was here all of 1862 and 1863 and the most of 1864; don't know where he died, but heard in Paris; don't know when he left this country.

R. H. CARNAL.

EMMONDS M. WELLS, being sworn, says:

I knew Stephen Duncan Linton very well and intimately. He was a little my senior. He never resided in Rapides parish, that I know of. I was on terms of intimate social intercourse with him. If he had resided in this parish I should have known it. I

1293 saw him on almost every occasion that he came here. He generally remained 8 or 10 or 15 days. He came once a year sometimes. He was a married man; never brought his wife here. His plantation in this parish had no mansion or dwelling on it; nothing but overseer's house and quarters and other plantation buildings. He resided a few years in New Orleans; used to meet him there when I went down to the races. He moved from Natchez to New Orleans about 1852 or '53. He lived in New Orleans about

2 years, and then married in East Baton Rouge, and moved up there and lived there until the war commenced, and then I lost sight of him.

X ex. by public adm'r'- counsel:

I was here in 1862 & 1863 & 1864; never saw Linton since the surrender.

E. M. WELLS.

Filed January 21st, 1875.

CHARLES OWEN, *Dep'y Cl'k.*

Testimony of William Polk and N. C. Weems, Taken by Consent, to be Used in Evidence in this Cause.

Succession of S. DUNCAN LINTON. No. 1171.

1294 WM. POLK, being sworn, says he knew Stephen Duncan Linton very well. His plantation adjoins Linton's; has known Linton twenty years. Linton never resided in Rapides parish, nor claimed to reside here, that witness is aware of. He used to come to Rapides parish once or twice a year and visit his plantation. His stay was generally limited to about ten days—rarely or never beyond that. There is no family mansion or dwelling on Linton's plantation. When he came up he stayed in a small house of one or two rooms in the quarter yard. He was here once during the war; that was after Banks' raid, in 1863. He and his father-in-law, Jehu Perkins, came up together, and staid about two or three weeks, and then carried off his negroes, stock, &c., to Texas.

His wife was with him then. It was her first and only visit here. Witness went with his wife to see Mrs. Linton and Mrs. Linton came to see us. Witness is confident that Mrs. Linton did not stay longer than two weeks. She left for Texas with her husband and father. They had no furniture, except such as Linton had put in this small house, which was only for bachelor's rooms. The house was
1295 not big enough for a family. Duncan Linton lived in New Orleans from the time witness first knew him, 20 years ago. He never lived anywhere else. Witness and family were on social terms with Linton and his wife, and, as the plantation adjourned, witness knew when Mrs. Linton was there and how long. She was never there but once, and that was in 1863. Witness generally went to see Mr. Linton when he came and knows when and how often he came to this parish.

X examined:

Mr. Linton came to this parish after the fall of New Orleans; came here after the occupation of Baton Rouge by the Federals, in 1862; does not think that Linton ever claimed East Baton Rouge as his domicil. He resided in East Baton Rouge a short time after his marriage; does not remember when he was married. Linton went

from here directly to Houston, Texas, carrying his negroes, wife, and everything he had except his plantation. This was in May or June, 1863. He remained in Texas six or eight months, during which time he sold his negroes, and went from there to Europe by way of Matamoras. He died in Paris. He never returned to Louisiana to live.

May 28th, 1872.

WM. POLK.

1296 Agreed to be read in evidence.

THOS. C. MANNING,
Att'y for Linton Heirs.
R. J. BOWMAN,
Att'y for O. K. Hawley, Adm'r.

NATHANIEL C. WEEMS, being duly sworn, says: He knew S. Duncan Linton well; was his neighbor; lives about 3½ or 4 miles from Linton's plantation. Linton never lived in Rapides parish; never voted here, and never staid here more than 10 days or two weeks at a time. He used to visit his plantation once or twice a year, but the place was left in charge of an overseer. Linton was here in 1863 and staid about two weeks. He went off with his slaves and stock to Texas. His father-in-law, Mr. Perkins, came with him in 1863 and went to Texas with him.

Linton could not have staid here in 1863 more than two or three weeks.

Witness never heard of Linton living anywhere but New Orleans. He did not live in Rapides.

N. C. WEEMS.

Agreed to be read in evidence by the undersigned May 28th, 1872.

THOS. C. MANNING,
Attorney for Heirs.
1296½
B. J. BOWMAN,
Attor'y for Hawley, Adm'st'r.

Filed June 21st, 1875.

CHAS. OWNS,
Dep'y Clerk.

Succ. STEPHEN. D. LINTON. No. 1171.

Judge T. C. MANNING, sworn, says: He knew the late S. D. Linton. He is dead; died in France a little while before C. M. Calvit's petition was filed; has knowledge of his family number & relations. He left no children. He had a brother who died before him, also childless. He left two sisters. One of them is unmarried and resides in France; the other is married to Mr. Surget and resides in Mississippi. Those are the heirs of this estate.

He left a widow; she has remarried and resides in Mississippi. None of the heirs are represented in the State; none of them are

present. The wife has interest in this property, because it was inherited from his father, Jno. Linton, and de-cended to his son.

X examined, says:

Mrs. Surget lives in Natchez or near it. The other sister
1297 resides in France, at Bordeaux. Judge Morgan and Gen'l Hayes do not represent the heirs. The heirs are known; he has stated who they were—sisters of the deceased. They have done nothing in relation to the succession one way or the other; they have not renounced it. Mr. Linton died a very little while before C. M. Calvit'- petition was filed; a month about.

Advertisement of C. M. Calvit; application for administration; offered in evidence. See page —.
Filed January 21st, 1875.

CHAS. OWEN, *Dep'y Cl'k.*

Deposition of E-stace Surgent.

STATE OF LOUISIANA, }
Parish of Rapides. }

In the Parish Court. No. 1171.

To the Consul of the United States of America at Bordeaux, France, Greeting:

Know ye that we, reposing confidence in your prudence and fidelity, do by these presents give unto you authority deligently
1297½ to examine E-stace Surget, a resident of Bordeaux, France, in a certain suit or cause now pending in our said court, entitled succession of Stephen Duncan Linton, on the part of the heirs of said Stephen Duncan Linton; therefore we desire you at certain times and places by you to be appointed for that purpose to cause the said witness to come before you, and that you then and there examine him upon his oath, first duly administered according to law; that you reduce the said examination to writing, and when you shall have thus taken the same that you send it up, closed under your seal, to us in our said court, at the court-house, in the town of Alexandria, parish of Rapides, United States of America, on or before the third (3rd) Monday of January, A. D. 1874, and have you then and there this commission.

Witness the Honorable C. V. Ledoux, judge of said court, this 14th day of November, A. D. 1873.

CHARLES OWENS,
Deputy Clerk.

1298 Succession of STEPHEN DUNCAN LINTON. No. 1171.

To the honorable the judge of the parish court for Rapides parish, Louisiana:

The heirs of S. D. Linton heretofore made parties to these proceedings pray the court to issue a commission to the consul of the

United States at Bordeaux, France, directing & empowering him to take the testimony of Eustace Surget, whom they allege is an important witness in their behalf and who resides at that place, in answer to the following interrogatories, a copy of which they pray may be served upon the public administrator or his attorney of record with due notice, and that said commission be returnable to the 3d Monday of January next of your court:

1st Interrogatory. Mention your name and present residence.

2nd Int'y. Were you acquainted with the late S. Duncan Linton, and how long have you known him?

3d Int'y. Did or did not he ever reside in the parish of Rapides, State of Louisiana, U. S., as his home?

1299 4th Int'y. Where did he live at the commencement of the war? If you say at New Orleans, did he or not have or occupy a residence there with his family?

5th Int'y. Did he or not continue to reside there with his family after the commencement of that war; and, if yea, how long?

6th Int'y. Did he or not leave New Orleans on or before its capture by the army and navy of the United States; and, if yea, where did he go?

7th Int'y. Did he have property, lands, and slaves in some of the country parishes of Louisiana; and, if yea, in what ones?

8th Int'y. Where you or not in the parish of Rapides, Louisiana, during the years 1862 and 1863 and 1864; and, if yea, in what capacity?

9th Int'y. Did you or not see and converse with S. D. Linton in Rapides parish, La., during any of these years? If yea, state the time.

1300 10th Int'y. Were you or not sufficiently intimate with him for him to converse with you freely and unreservedly about his business, his intentions, and his future movements? Did he or not converse with you about them?

11th Int'y. Did he or not come to Rapides parish, La., with the intention of remaining there and adopting it as his home?

12th Inte'y. How long did he remain there, and did he or not take with him when he left any portion of his property? If yea, what part of it, and where did he go with it?

13th Int'y. Did he or not ever say to you that he had come to Rapides parish, La., with the intention of remaining, or as a refugee?

14th Inte'y. Where you or not ever on his plantation in that parish while he and his family were there; and, if yea, *and* in what sort of a house was he living?

15th Int'y. Did he or not return to that parish afterwards? If yea, how long time elapsed before his death, and did he die?

16th Int'y. Did he or not return to the United States after the war? If yea, where did he go? To what city, town, or parish or State?

1301 17th Int'y. Did you or not see him and converse with him after the war; and, if yea, where?

18th Int'ry. What place in Louisiana was his domicil at the time you then saw and spoke with him?

19th Int'ry. Did or did not his widow return to Louisiana after his death?

20th Int'ry. Did or did not he ever have a domestic establishment or mansion in Rapides parish, La., wherein he resided as a home or other than a temporary stopping place?

21st Inte'y. State any other matter within your knowledge concerning the residence or domicil of the deceased in Louisiana or any part thereof as if you were specially interrogated thereto.

MANNING,
Att'y for Heirs of S. D. Linton.

Parish court, parish Rapides, La.
Filed November 14th, 1873.

CHAS. OWEN,
Deputy Clerk.

1302 & 1303 Let a commission issue as prayed for and according to law.

Done and signed at chambers this 14th day of November, 1873.

C. V. LEDOUX,
Parish Judge.

Cross-Interrogatories.

SUCCESSION OF S. D. LINTON
vs.
PUBLIC A-MINISTRATOR. } No. 1171.

In this case the administrator accepts the service of the interrogatories propounded to Eustace Surget, of Bordeaux, in the Kingdom of France, and propounds the following cross-interrogatories:

Cross-int'y 1st. How long have you resided in France?

Cross-int'y 2nd. How long have the plaintiffs, Mrs. Surget and Mary A. Linton, resided in France?

Cross-int'y 3d. Did or did not S. D. Linton come to the parish of Rapides with his family in the summer of 1862, and remain
1304 there until January, 1863, *eighteen hundred and sixty-three?*

X Interro'y 4th. If, in answer to the 12th interrogatory, you say S. D. Linton took with him when he left the parish of Rapides any portion of his property, please state whether he took with him his slaves, teams, and wagons.

X Int'y 5th. To what State or country did the said Linton go on leaving the parish of Rapides; did he or not go directly to Texas, from thence to Matamoras, and from thence to France, and did he not take with him his family?

Cross-int'y 6th. If you answer to the 4th cross-interrogatory that Linton took with him his slaves and wagons and teams on leaving Rapides, did he not sell the said slaves in Texas, and his wagons and teams either in Texas or Mexico?

Cross-int'y 7th. Did or did not said Linton arrive in France in the summer or early in the fall of 1863?

1305 Cross-inter'y 8th. If, in answer to the 19th interrogatory, you say that the widow of S. D. Linton returned to Louisiana after his death, please state from what country she returned. Was or was it not from France? Was or was not she and her husband living in France at the time of his death?

Cross-int'y 9th. If, in answer to the 16th interrogatory, you say that Mr. Linton returned to Louisiana after the war, was or was not said return in the middle or latter portion of October, 1865, and did he or did he not leave the State of Louisiana in the latter — of November or beginning of December of the same year—1865—for New York and go from thence to France?

Cross-int'y 10th. If, in answer to 18th int'y, you say that Mr. Linton had a domicil in Louisiana after the war, please state the facts and circumstances which constituted that domicil.

1306 Cross-int'y 11th. How near to each other did the plaintiffs and Mr. Linton reside in France? Did not Mr. Linton have a domestic establishment in that country before his coming to Louisiana, in 1865, and after his return from that visit?

R. J. BOWMAN,
Att'y for Administrator.

Filed November 14, 1873.

CHAS. OWEN, *Dep'y Cl'k.*

A true copy.

CHARLES OWEN, *Dep'y Cl'k.*

Answer- to Interrogatories.

CONSULATE OF THE UNITED STATES OF AMERICA,
At Bordeaux, France.

Be it remembered that pursuant to the annexed commission from the parish court of the parish of Rapides, State of Louisiana, in the United States of America, on this tenth day of December, one thousand eight hundred and seventy-three, before me, Victor Olgiati, vice-counsul of the United States of America for Bordeaux, France, personally came and appear-d Eustace Surget, a resident of Bordeaux, well known to me to be the party named and described in the annexed commission, and said appearer being by

1307 me duly sworn according to law answers the interrogatories annexed to aforesaid commission as follows, namely:

To the first interrogatory the witness says: My name is E-stace Surget; my present residence is Bordeaux.

To the second interrogatory witness answers: Yes. I knew the late S. Duncan Linton for twenty years, more or less, before his death.

To the third interrogatory witness answers: Never, to the best of my knowledge.

To the fourth interrogatory witness answers: He resided at New Orleans and occupied a residence there with his family.

To the fifth interrogatory witness answers: To the best of my knowledge, he resided there with his family after the commencement of the late war, and until the city was captured by the Federal troops or forces.

To the sixth interrogatory witness answers: I am not positive if he left New Orleans before or after its capture, but he did leave it about that time and came to Alexandria, State of Louisiana, later on.

To the seventh interrogatory witness answers: He owned
1308 property, lands and slaves, in Rapides parish, Louisiana.

To the eight- interrogatory witness answers: I was in the parish of Rapides, Louisiana, during the years 1862, 1863, and part of 1864, in the capacity of adjutant general of the military district of Louisiana, then occupied by the Confederate forces.

To the ninth interrogatory witness answers: I saw and conversed with S. D. Linton in the parish of Rapides, Louisiana, in 1862 or 1863.

To the tenth interrogatory witness answers: I was sufficiently intimate with him for him to converse with me about his affairs, intentions, and future plans, and he did converse with me about them.

To the eleventh interrogatory witness answers: He informed me that he did not come to Rapides parish, Louisiana, with the intention of remaining there or adopting it as his home.

To the twel-th interrogatory witness answers: To the best of my recollection, he remained there about one month or six weeks, and when he left he took with him cotton, and I think some negroes, and went to Texas.

To the thirteenth interrogatory witness answers: He said
1309 to me that he did not come to Rapides parish, Louisiana, with the intention of remaining, but to sell some of his property and go to Europe.

To fourteenth interrogatory witness answers: I never was on his plantation in Rapides parish, La., while he and his family were there, and do not know what sort of house he lived in.

To the fifteenth int'y witness answers: I do not know if he ever returned to that parish afterwards. He died about five years afterwards at Passy, near Paris, France.

To the sixteenth interrogatory witness answers: He returned to the United States after the war, but, to the best of my knowledge, wsnt no farther than New York city.

To the seventeenth interrogatory witness answers: I saw him and conversed with him in New York city.

To the eighteen- interrogatory witness answeres: He was not domiciled in Louisiana at that time, and I only saw him in New York city.

To the nineteenth interrogatory witness answers: I heard his widow had returned fo Louisiana after his death.

To the twentieth interrogatory witness answers: Neither he nor his family ever considered his establishment in Rapides parish, Louisiana, as his home.

1310 To the twenteeth-first interrogatory witness answers: At the breaking out of the late war and for some time previous to that epoch S. D. Linton resided in the city of New Orleans and considered that his home.

Cross-examination:

To the first cross-interrogatory witness answers: Seven years.

To the second — interrogatory witness answers: Mrs. Surget and Mary A. Linton have resided in France about six years.

To the third cross-interrogatory witness answers: S. D. Linton came to the parish of Rapides, Louisiana, in 1862 or 1863, but, to the best of my recollection, did not remain there longer than six weeks or perhaps two months.

To the fourth cross-interrogatory witness answers: I believe he took some slaves, teams, and wagons.

To the fifth cross-interrogatory witness answers: S. D. Linton went directly to Texas, and from thence via Mexico to France. He took his family with him.

1311 To the sixth cross-interrogatory witness answers: To the best of my knowledge and belief, the slaves, teams, and wagons were sold either in Texas or Mexico.

To the seventh cross-interrogatory witness answers: I do not know when S. D. Linton arrived in France.

To the eighth cross-interrogatory witness answers: If his widow returned to Louisiana after her husband's death, she returned from France. She and her husband were living in France at the time of his death.

To the ninth cross-interrogatory witness answers: S. D. Linton returned to the United States in the summer of 1865, but I do not think he went to Louisiana. He returned to France almost immediately from New York.

To the tenth cross-interrogatory witness answers: Mr. Linton had no domicil in Louisiana after the war, to my knowledge.

To the eleventh cross-interrogatory witness answers: Plaintiffs and Mr. Linton resided about three hundred miles apart—the distance from Paris to Bordeaux. Mr. Linton had a domestic establishment in Paris before going to America in 1865, and also after his return.

In witness whereof I have hereunto subscribed my name
1312 and seal this the tenth day of December, A. D. 1873.

Subscribed and sworn to before me this tenth day of December, 1873.

E. SURGET. [SEAL.]

V. OLGIATE,
U. S. Vice-Consul, Bordeaux.

Filed January 21, 1875.

CHAS. D. OWEN,
Dep'y Clerk.

Power of Attorney from Linton Heirs to T. C. Manning.

CONSULATE OF THE UNITED STATES OF AMERICA, }
Bordeaux. }

Cons. du XXX Juillet 32. Charles J. Clinch, consul.

By this instrument of procuration be it known that on this tenth day of October, in the year of our Lord one thousand eight hundred and seventy-one, and the ninety-fifth of the Independence of
1313 the United States of America, personally came and appeared at this consulate Charlotte B. Surget, *nee* Linton, and widow of Francis Surget, a citizen of the State of Mississippi, in the United States of America, and now a resident of Bordeaux, France, and Mary A. Linton, a citizen of the State of Louisiana, and now residing in Bordeaux, France, sole surviving heirs to the estate and succession of Stephen Duncan Linton, deceased, and formerly a citizen of the State of Louisiana, in the United States of America, who declare separately and conjointly that they have made and appointed and by these presents make, nominate, and appoint Thomas C. Manning, Esq., of the parish of Rapides and State of Louisiana, to be their true and lawful attorney to represent them in and to act for them in the succession of their late brother, Stephen Duncan Linton, in the parish of Rapides and State of Louisiana aforesaid, and for the full execution of this purpose do grant unto him full power and authority to conduct or institute all requisite processes of law connected therewith, and in every respect to manage and transact
1314 the business and affairs of such succession as the said attorney shall in his discretion think fit, the said constituents hereby agreeing to ratify and confirm all and whatsoever the said attorney shall lawfully do or cause to be done by virtue of this act of procuration.

In testimony whereof the said appearers have hereunto affixed their hands and seals in the presence of V. Olgiate and E. Surget, competent witnesses.

C. B. SURGET.
MARY A. LINTON.

V. OLGIATE,
U. S. Vice-Consul.
E. SURGET.

CONSULATE DES ESTA-S UNIS }
d'Amerique a Bordeaux. }

On the tenth day of October, 1871, before me, the undersigned, U. S. consul for Bordeaux, personally appeared Madame C. B. Surget and Miss Mary A. Linton, both known to me to be the persons described in and who executed the foregoing deed, and acknowledged the same to be their act and deed, and declaired that they had executed the same freely and volunta-ily to the use and for the purposes their mentioned.

1315 Given under my hand and the seal of this consulate this the 10th day of October, 1871.

CHARLES J. CLINCH,
U. S. Consul, Bordeaux.

Filed January 21st, 1875.

CHAS. OWEN,
Dep'y Clerk.

Testimony of T. C. Manning.

T. C. MANNING, sworn, says:

Since my testimony was taken, 4 or 5 years ago, in this case the two sisters, Charlotte and Mary, of the deceased, S. Duncan Linton, have constituted me special attorney to represent them. They are the sole heirs of the deceased, Duncan Linton. They had a brother, John Linton, who died many years ago unmarried and childless. They were the children of an elder John Linton, who originally acquired the "Quantico" plantation in this parish, and it was from the father that S. D. Linton inherited all the property he owned in the *the* parish of Rapides.

X ex'm'd:

1316 S. D. Linton owned at the time of his death a large plantation—the "Quantico"—in this parish. It sold for $16,000 at public sheriff sale since the war. The succession of S. D. Linton is insolvent very heavily.

Re-examined:

The creditors of that estate hold a mortgage of over $100,000 against this plantation, and I am their representative.

Testimony of J. C. Wise.

J. C. WISE, sworn, says:

I have resided in this parish since 1841. I was deputy sheriff and sheriff from 1849 to 1860, in this parish. I was in that capacity *ex officio* tax collector. I knew S. Duncan Linton. I never knew him to live in this parish. He never voted or attempted to vote here, to my knowledge. I think I should have known it if he had. I never summoned him to serve as juror. He was in the habit of coming here once a year; sometime- twice. I always made it my business when he came here to collect the taxes due by him to this
1317 parish. He generally stayed but a short time—two or three weeks sometimes. I was here in business after first Federal raid in 1863; did not come here permanently then.

Testimony for Public Administrator.

J. MADISON WELLS, duly sworn, says:

I was acquainted with Stephen D. Linton. I had know- him

from the year 1845 up to the year 1866 or 1867. When I first knew him he resided in Natchez. He removed from Natchez to New Orleans. He there formed a commercial partnership with a Mr. Manderville. He was residing in that city in the year 1859. He came to the parish of Rapides in 1862 or, perhaps, in January, 1863; I rather think in 1862—in the fall of that year. He brought his family with him—his family, bedding, & servants; I mean house servants or domestics. His family consisted of his wife, father-in-law, and mother-in-law. When they came to this parish they resided on the Quantico plantation, about 13 miles from Alex-
1318 andria and ½ mile from my residence. I frequently visited him while residing there. Mr. Linton married John Perkins' daughter. The family brought a carriage and horses with them and a buggy. Mr. Linton and family resided in a cottage house on the plantation, near the overseer's house. Mr. Linton visited my family, as also Mr. Perkins did. I know of no other home of Mr. Linton than this parish. When he came here he may have had another home with his father-in-law at East Baton Rouge, but I don't know of it. We have had frequent conversations regarding the topic of the war, but I don't remember ever of his having said anything about his permanent residence here. Mr. Polk resided close to us, as also Mr. Carmel and Mr. Weems. Mr. Linton left this parish between the 15th of May and 1st of August, 1863, and went to Houston, Texas. He took all his negroes, except 2 or 3, with him—about 200 or 300. I never saw him after he left until December, 1865, or March, 1866, or along in that period—either late in the winter of 1865 or early spring of 1866. He then visited me in the city hall of New Orleans, while I was acting Governor and
1319 held my office in the city hall. He told me when he left here he was certain that his negroes would be em-cipated, and intended to sell them and go to France. He told me at this time that he was living in France and had come here on a visit. He did not tell me when he left Texas nor when he went to France. He never came back to the parish of Rapides. After August, 1863, after the interview in the city hall, he returned immediately to France.

X examined for heirs of Linton:

Mr. Linton never lived in this parish, except during period mentioned, namely, parts of 1862 or 1863. He was repeatedly here on visits, but his residence was elsewhere. I know of no other residence that Linton had before the war, except his residence in Natchez and subsequently in New Orleans.

The cottage spoken of was built expressly for Linton's residence, and was occupied even prior to his moving here. It was built in 1851 or 1852 or maybe 1853. It contained 2 rooms, with a front gallery. On transients visits here he occupied that house.
1320 Prior to Gen'l Banks' advance in 1864 there was — general stampede by planters with their negroes to Texas, who refugeed there. Linton, his wife, and farther-in-law, I supposed, came from East Baton Rouge to this parish. The city of New Orleans was

captured by Federals last of April or 1st of May, 1862. I never knew Mr. S. D. Linton to vote in this parish nor his family to be in this parish except time spoken of.

Re-examined by public administrator:

Mr. Linton came to this parish immediately after the fall of New Orleans. If they stayed at Baton Rouge at all it must have been a very short time. They came here because they supposed Baton Rouge would be occupied by United States forces.

Linton & family remained on the plantation in this parish until they left for Texas. I left here 7th November, 1863 and — to Natchez and from there to New Orleans. I never saw Linton in New Orleans while it was occupied by United States forces during the war. I was in New Orleans from November, 1863, until the war closed. I saw Mr. Perkins, Linton's father-in-law during
1321 this time. He informed me that Mr. Linton was then living in France; travelled with Mr. Perkins to New York just before the close of the war. I don't know that Mr. Linton had any residence in New Orleans after the year 1859; don't believe I was in New Orleans from 1859 to 1863. I don't know where Mr. Linton lived from 1859 until he came here.

Linton came here immediately after paying $10.00 in gold to Mr. Elgee. I think Linton came earlier than I said in 1862, as he came to this parish *as he came to this parish* immediately after the fall of New Orleans.

X examined by heirs:

When Linton came to this parish nobody commanded here. When Banks came here in 1863 Linton stayed in his house. I don't recollect any conversation with Linton in relation to making this his permanent home. I saw in New Orleans Republican an advertisement by public administrator of New Orleans applying to be qualified as administrator of succession of Stephen Duncan
1322 Linton, same person whose succession is pending here. I saw this in March, 1872.

J. MADISON WELLS.

Admitted in evidence.

THOS. C. MANNING,
Att'y for Linton's Heirs.
R. J. BOWMAN,
Att'y for O. K. Hawley, Pub. Administrator.

Filed January 21, 1875.

CHAS. OWEN, *Dep'y Cl'k.*

Bill of Exceptions.

Succession of S. DUNCAN LINTON. No. 1171.

Be it known that on the trial of this cause the heirs of the deceased, Charlotte B. and Mary P. Linton, offered the testimony of

Coleman M. Calvit, Henry M. Robinson, Chas. L. Robinson, J. M. Wells, and document refer-ed to in their testimony marked "A," and the testimony of Abram Martin, John H. Ramsdell, T. O. Moore, and W. J. Neal, all taken and reduced to writing and filed and appended hereto, when the introduction and reception of their
1323 evidence was objected to on account of its irrelevancy to the matter at issue, when the court sustained the objection & excluded the testimony on the ground that the testimony offered is *res inter alios acta* and not pertinent to the issue.

To which ruling and opinion the heirs aforesaid except and tender this their bill of exceptions thereto, which is accordingly signed and certified in open court this 21st January, 1875.

W. F. BLACKMAN,
Judge ad hoc.

Bill of Exceptions.

Succession of S. D. LINTON. No. 1171.

Be it known that on the trial of this cause the heirs of the deceased, Charlotte B. Linton and Mary P. Linton, offered to introduce in evidence a certified copy of a petition of the public administrator of Orleans parish praying to be appointed administrator of the deceased, and an advertisement of that application in the N. O.
1324 Republican, which are appended hereto, but the counsel for the public administrator of Rapides parish objected because of its irrelevency, and the court sustained the objection and excluded the testimony on the grounds that the testimony offered is *res inter alios acta* and not pertinent to the issue.

To which ruling and opinion the heirs aforesaid except and tender this bill of exceptions thereto, which is accordingly signed and certified this 21st January, 1875.

W. F. BLACKMAN,
Judge ad hoc.

Judgement.

Parish Court. January Term.

Succession of S. D. LINTON.

In this case plaintiffs, the sisters and heirs of S. D. Linton, deceased, brought an action to annul a judgment of the court of probates appointing and confirming O. K. Hawley, public administrator of the parish of Rapides, in the administration of the succession of S. D. Linton, and at the same time plaintiffs,
1325 through their special attorney-in-fact, Thos. C. Manning, prays that in case said judgment is not annulled that said heirs be placed in possession of the estate. These two actions are insistent. This question was not raised by the pleadings of defendant, however, and no rule was asked to force plaintiff to elect which cause of action he would pursue. From the evidence before the court it is very evident that Linton at the time of his death had no known

domicil in this State. He died in France, where he had been living with his family for a number of years.

The evidence shows that his principal property at the time of his death was situated in this parish, & under art. 929, C. C., this court had jurisdiction, and his succession was properly opened by the public administrator.

The question is can the heirs who claim a succession with benefit of inventory, which is being administered under the order of the court of probates, come in at this stage of the proceedings and be placed in possession of the same.

1326 This is not a vacant succession, nor is it a succession administered by a testamentary executor. The articles of the C. C., 1180 & '81 and 1664, then, can have no application or bearing on this case. The principal is different. The heirs of Linton, through their attorney-in-fact, asked to be placed in possession as beneficiary heirs without waiting for the public administrator to close up the administration, pay up the debts, law charges, &c., and file his account. This course is, in the opinion of the court, irregular. In the case of Westholtz, widow of David Smith, *vs.* Westholtz, 19 A., 294, the court say:

It is nevertheless irregular that heirs, some of whom are beneficiary, who are only entitled to the residue of a succession should interfere with the administration and take the property out of the administrator's possession until all the charges and debts of the succession are paid and the final account of the administrator homologated.

This case alluded to above presents the same principals as the case at bar. It is therefore ordered, adjudged, and decreed that

1327 the application of plaintiffs for the reasons assigned be dismissed as of nonsuit.

Thus done, read, and signed in open court this the 23d day of January, 1875.

W. F. BLACKMAN,
Judge ad hoc.

Filed January 30, 1875.

CHAS. OWNS,
Dep'y Clerk.

Appeal Bond.

Know all men by these presents that we, Charlotte B. Linton, Widow Surget, and Mary P. Linton and Eustace Surget, her husband, as principals, and Thomas C. Manning, as security, are held and firmly bound unto Levi Wells, clerk of the district court, Rapides parish, and *ex officio* clerk of the parish court thereof, in the sum of one hundred dollars, for the payment whereof we bind ourselves, our heirs, administrators, and executors, firmly by these presents.

Sealed with our seals and dated at Alexandria, La., on this

1328 30 day of January, 1875.

Whereas the above-bounded Charlotte B. Surget and Mary P. Surget and he- husband, Eustace Surget, have appealed from a

final judgment rendered against them in the suit of succession of S. D. Linton, in the parish court in and for Rapides parish, Louisiana, on the 23d day of January, 1875:

Now, the condition of the above obligation is such that the above-bound appellants shall prosecute their appeal and shall satisfy whatever judgment may be rendered against them, or that the same shall be satisfied by the proceeds of the sale of their estate, real or personal, if they be cast on the appeal; otherwise the said T. C. Manning, surety, shall be liable in their place.

CHARLOTTE B. SURGET.
MARY P. SURGET,
Per EUSTACE SURGET.
THOS. C. MANNING,
Their Att'y.
THOS. C. MANNING, *Surety.*

Parish court, parish of Rapides, Louisiana.
Filed 30 January, 1875.

CHAS. OWEN,
Deputy Clerk.

1329 *Judgment of Supreme Court.*

Supreme Court of the State of Louisiana.

Succession of STEPHEN DUNCAN LINTON. No. 5621.

Appeal from the parish court, parish of Rapides.

CLERK'S OFFICE, NEW ORLEANS, *April 5th*, 1875.

Mr. Justice Ludeling delivered the opinion and decree of the court in the words and figures following, to wit:

It appears that in December, 1867, Stephen D. Linton died in France; that he left a plantation situated in Rapides parish; that in the year 1868 C. M. Calvit applied to be appointed administrator of Linton's succession. Opposition by creditors and the public administrator were made to said application, and in 1871 O. K. Hawley, public administrator, was appointed. In 1872 the sisters
1330 of Linton and residents of France allege that they have accepted said succession with benefit of inventory; that the said Linton was not a resident of Rapides, but of New Orleans, at the time of his death, and that the court of probates of Rapides had no jurisdiction over the succession; they pray that the order appointing the public administrator be set aside *pendente lite.* Hawley died and J. M. Wells, Jr., was appointed to succeed him as public administrator.

The sisters of Linton filed what they called an opposition to the appointment of J. M. Wells, Jr., public administrator, on the ground that the court of Rapides was without jurisdiction. They further alleged that should it be held that Rapides was the proper place to open said succession they are beneficiary heirs, and that T. C. Manning is their attorney-in-fact. They pray to be recognized as bene-

ficiary heirs; that the order appointing the public administrator be annulled, and that the property be delivered to them.

Two questions are presented for our decision:

1st. Is Rapides the place where the succession of Linton
1331 should have been opened.

2nd. Can the heirs, who accept with benefit of inventory, take the property of the succession from the public admi-strator before his administration has been closed?

1st. The evidence shows that Linton resided in France when he died, and that the only real estate he owened in Louisiana was situated in Rapides.

The succession was property opened in Rapides. C. C., 935.

2nd. Heirs who accept with the benefit of inventory have no right to be put in possession of the property until after the administration thereof is closed. C. P., 976; 2 La., 299; 6 La., 212; 3 An., 502; 19 An., 293; 21 An., 364; 7 R., 42; 10 R., 457; 12 R., 333.

It is therefore ordered that the judgment of the lower court be affirmed with costs of appeal.

A true copy.

M. P. JULIAN,
Dep'y Clerk.

Parish court, parish of Rapides, La.
Filed June 1st, 1875.

CHAS. OWEN,
Dep'y Clerk.

1332 *Judgment.*

J. MADISON WELLS, Public Adm'r,
vs.
Mrs. MARIE EVANS & HUSBAND. } P. C.

In this cause, by reason of the law being in favor of the defendant, it is ordered, adjudged, and decreed that there be judgment as if nonsuit and the same be dismissed at plaintiff's cost. Be it further ordered that the sum of ten dollars be taxed as curator's fees in favor of W. F. Blackman, att'y-at-law.

This done, read, and signed in open court this the 27th October, A. D. 1875.

H. L. DAIGRE,
Parish Judge.

Filed Oct. 27th, 1875.

CHAS. MOORE, JR.,
Deputy Clerk.

1333 *Motion for New Trial.*

In the Matter of the Succession of S. D. LINTON.

J. M. WELLS, Adm'r,
vs.
MARY EVANS.

In this case the administration moves for a new trial upon the ground that the judgment of the court is contrary to law.

R. J. BOWMAN, *Att'y.*

Filed Oct. 27th, 1875.

CHAS. MOORE, JR.,
Dep'y Clerk.

Petition of J. M. Wells, Jr., Administrator.

To the honorable the parish judge of the parish of Rapides:

The petition of J. M. Wells, Jr., of said parish, respectfully represents that since his appointment as administrator of the succession of S. D. Linton a will has been found and probated in the records of your hon'ld court and ordered to be executed; that said will appoints no testamentary executor, and that petitioner as
1334 public administrator is entitled to the appointment of dative testamentary executor of said S. D. Linton in preference to all others. Wherefore petitioner prays that he be appointed dative testamentary executor of the said S. D. Linton; that due notice be given of this application, and for costs and general relief.

R. J. BOWMAN,
Att'y for Petitioner.

The foregoing petition beeing considered, it is therefore ordered that the notice be given of this application for the appointment of dative testimentary executor according to law.

This done and signed on this 9th day of February, 1876.

H. L. DAIGRE,
Parish Judge.

Filed Feb'y 9th, 1876.

CHAS. MOORE, JR., *D'y Clerk.*

Judgment.

There being no opposition filed to the foregoing application of J. M. Wells, Jr., public administrator, for dative testimentary executor of the estate of Stephen D. Linton, as shown by the certificate of the clerk filed herewith, and it appearing from the
1335 evidence that said application had been advertised in the official journal for more than ten (10) days—clear days—and no opposition filed thereto, it is therefore ordered, adjudged, and decreed, — J. M. Wells, Jr., public adm'r, be, and is hereby, duly ap-

pointed dative testimentary executor of the estate of Stephen Duncan Linton upon qualifying according to law.

Thus done in chambers the 13th day of March, A. D. 1876.

H. L. DAIGRE,
Parish Judge.

Filed March 15th, 1876.

CHAS. MOORE, JR.,
Deputy Clerk.

Note of Evidence.

Parish Court.

Succession of STEPHEN D. LINTON. No. 248.

Application of J. M. Wells, Jr., to be appointed dative testamentary executor.

CHARLES MOORE, Jr., d'y clerk, sworn, says:

That said application of J. M. Wells, Jr., has been duly advertised 10 days, and a copy of said application having been posted on the door of the court-house for ten days according to law.

1336 CHAS. MOORE, JR.

Sworn to and subscribed to before me this 15 day of March, A. D. 1876.

H. L. DAIGRE,
Parish Judge.

Certificate.

CLERK'S OFFICE, ALEXANDRIA, *March 15th*, 1876.

I hereby certify that up to this date that no opposition to the application of J. M. Wells, Jr., for letters of dative testamentary executor has been filed in this office.

CHAS. MOORE, JR.,
Dep'y Clerk.

Filed March 15th, 1876.

CHAS. MOORE, JR.,
Dep'y Clerk.

Petition of J. M. Wells, Jr., Dative Testamentary Executor.

To the hon. the parish judge of the parish of Rapides:

The petition of J. M. Wells, Jr., dative testamentary executor of the succession of S. D. Linton, respectfully represents that the said succession is in debt and with no means to pay the same
1337 except the property known as the Quantico plantation, situated in said parish on the east side of Bayou Boueff, and containing about eighteen hundred acres, eleven miles from Alexandria, at the mouth of Bayou Robert, bounded on the upper side by

Chambers' land, on lower side by L'Esperance plantation, together with all the improvements thereon. Petitioner represents that said property is now in cultivation by parties who were on said plantation previous to the recent decision of the supreme court; that while it is necessary to sell said property to pay the debts and settle up said succession it is to the interest of said succession to sell the same, subject to the leases made with said parties of such portions as are in cultivation and having upon them growing crops.

Wherefore petitioner prays that an order of sale issue from your hon. court commanding the sheriff as *ex officio* auctioneer to sell said property, after due advertisement and according to law, on the following terms, viz: For cash, and such portions as are under cul-ivation and occupied subject to the leases of said portions until the 1st Jan'y, 1877.

1338 R. J. BOWMAN, *Att'r'y.*

Having been counsel in this case, I recuse myself, May 9th, 1876.

H. L. DAIGRE,
Parish Judge.

Order — Sale.

The foregoing petition being considered, it is thereupon ordered that an order of sale issue as prayed for.

This done & signed on this 11th day of May, 1876.

J. OSBORN,
Dist. Judge.

Filed May the 11th, 1876.

CHAS. MOORE, JR.,
Dep'y Clerk.

Judgment, Circuit Court U. S., Fifth Circuit & District of Louisiana.

Circuit Court of the United States, Fifth Circuit and District of Louisiana.

MARIE P. EVANS and WILLIAM R. EVANS, Complainants,
vs.
DAVID URQUHART, THE STATE NATIONAL BANK OF THE CITY OF NEW ORLEANS, and J. MADISON WELLS, Jr., Defendants.

1339 The President of the United States to David Paul, sheriff of the parish — Rapides:

Whereas it has been represented to us in our said circuit court on the part of Marie P. Evans and William R. Evans, complainants, by a supplemental bill of complaint lately exhibited against you, J. Madison Wells, Jr., and others, touching certain matters and things therein set forth:

Now, therefore, in consideration of the premises and of the allegations in said supplemental bill of complaint contained, you, the said David Paul, sheriff of the parish of Rapides, your attorneys, and

each of you, are hereby commanded and strictly enjoined unde- penalty of the law that you absolutely refrain and desist from interfering with the authority and possessions of said Marie P. Evans, one of the complainants in this suit, as the sold heir and universal legatee of Stephen Duncan Linton, deceased, or of her possessions and control as such over the Quantico plantation and her rights as such heir and universal legatee, as set forth in the original com-
1340 plaint in this cause, and also to desist and refrain from proceeding to sell and dispose of the said "Quantico" plantation or any part or portion thereof, or your doing any other act injurious to or interfering with the said Marie P. Evan- as the sole heir and universal legatee of the said Stephen D. Linton in respect to the said "Quantico" plantation until the further orders of this court.

Witness the Honorable Morrison *B.* Waite, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this third day of June, in the year of our Lord 1876.

[L. S.] F. B. VINOT,
Deputy Clerk.

Order of Sale of Quantico Plantation to D. C. Paul, Sheriff.

Parish Court, Parish of Rapides.

In the Matter of the Succession of S. D. LINTON. No. 248.

State of Louisiana to D. C. Paul, sheriff and *ex officio* auctioneer of said parish:

In virtue of an order issued this day from the hon. parish
1341 court in the above-entitled succession you are hereby authorized and commissioned, after due and legal advertisement, — the following-described property, viz: A certain plantation or tract of land called the Quantico plantation, situated on the east side of Bayou Bouef, about eleven miles from the town of Alexandria, at the mouth of Bayou Robert, bounded on the upper side by land of Chambers, on the lower side by L'Esperance plantation, together with all the buildings and improvements thereon, on the following terms, viz., cash. Those portions of the said land under cultivation, being leased until the first day of January, 1867, *an* are to be sold subject to and with said lease.

Clerk's office, May 11th, 1876.

[L. S.] CHAS. MOORE, JR.,
D'y Clerk.

Returned by order of att'y of executor Feb'y 12th, 1876.

Petition of Marie P. Evans and Her Husband, William R. Evans.

Probate Court, Parish of Rapides.

In the Matter of the Succession of STEPHEN DUNCAN LINTON, Deceased. No. 248.

1342 The petition of Mrs. Marie P. Evans and of her husband, William R. Evans, herein aiding, authorizing, and assisting his said wife, respectfully shows—

That on the 12th of July, A. D. 1875, judgement was rendered by your honorable court recognizing your petitioner, Mrs. M. P. Evans (widow of the deceased), as his universal legatee without the benefit of inventory, and ordering that she be placed in possession of all the property belonging to and depending upon the succession of Stephen Duncan Linton, deceased, as will appear by reference to the mortuary proceedings of said succession, hereto annexed and made a part of this petition.

That on the 27th day of March, 1876, judgement was rendered in the supreme court of the State of Louisiana, decreeing the "Quantico" plantation, situated in this parish and fully described in the inventory and proceedings filed in this succession, to be the property of the

1343 succession of Stephen Duncan Linton, deceased, as appeared by certified copy of said judgement No. 6186, hereto annexed and made a part of this petition.

That since said judgement of supreme court has become final J. Madison Wells, public administrator, has illegally taken possession of "Quantico" plantation and pretends to hold possession of said property in his capacity of dative testamentary executor; that she is desirous of obtaining a writ of possession, directed to the sheriff of the parish of Rapides, commanding him to place your petitioner in quiet possession of said "Quantico" plantation under the judgement of this court of date July 13th, 1875. Petitioners are now desirous of compelling said J. Madison Wells, public administrator or dative testamentary executor, to file a full and correct account of his administration of said succession within ten days from the service hereof.

Wherefore petitioner prays that a writ of possession may issue according to law, commanding the sheriff of this parish to place your petitioner, Mrs. Marie P. Evans, and universal legatee

1344 in peac-able and actual possession of the Quantico plantation, situated in this parish and fully described in the mortuary proceedings of Stephen Duncan Linton, deceased. Further prays that J. Madison Wells, public administrator and dative testamentary executor, may be duly cited to answer this petition, and, after due course of law, that he may be ordered and decreed to file a full and correct account of his administration of the succession of Stephen Duncan Linton, deceased; also prays for general relief in the premises.

R. A. HUNTER,
W. W. LEUHS,
Attorneys.

Order.

The foregoing petition considered, ordered that a writ of possession issue, as prayed for, commanding the sheriff of the parish of Rapides to place Mrs. Marie P. Evans and husband in actual and peaceable possession of the Quantico plantation, situated in this parish and fully described in the mortuary proceedings of
1345 Stephen Duncan Linton, deceased. Further ordered that J. Madison Wells, public administrator, file a full and correct account of his administration of the succession of Stephen Duncan Linton, deceased; said account to be filed within ten days from service hereof.

Done & signed in chambers this the 16th day of May, A. D. 1876.

Filed May 16th, 1876.

H. L. DAIGRE,
Parish Judge.
CHAS. MOORE, JR.,
Deputy Clerk.

I hereby accept service of this petition and order, reserving all delays.

May 16th, 1876.

R. J. BOWMAN,
Att'y for J. M. Wells, Executor.

Writ of Possession.

Parish Court, Parish of Rapides.

State of Louisiana to the sheriff of Rapides parish, Greeting:

Your are hereby ordered, in the name of the State of Louisiana, to place Mrs. Marie P. Evans and husband in actual and peaceable possession of the Quantico plantation, situated in this
1346 parish, and more fully described in the mortuary proceedings of Stephen Duncan Linton.

Witness the Honl. H. L. Daigre, parish judge, this the 16th of May, A. D. 1876.

[SEAL.] CHAS. MOORE, JR.,
Dep'y Clerk.

Sheriff's Return.

Received the within writ on the 16th of May, A. D. 1876, and I proceeded immediately to the Quantico plantation, on Bayou Boeuf, to execute the same, and, accompanied by Mrs. Marie P. Evans, I entered upon said plantation and informed Mr. Charles L. Robinson, the party in possession of the Quantico plantation, of the object of my visit and read to him the within order of the court.

Mr. C. L. Robinson informed me that he was in possession of the property under a lease from the public administrator, and he refused to surrender peaceably the property to me. I was therefore

unable to execute this order of the court, and now return the same to await further orders of the court.

JNO. M. BARRETT,
Deputy Sheriff.

1347 Filed May 17th, 1876.

CHAS. MOORE, JR.,
Dep'y Clerk.

Answer of J. Madison Wells, Executor.

In the Matter of the Succession of S. D. LINTON. No. 248.

To the hon. judge of the parish *judge of the parish* of Rapides:

In this case now comes J. M. Wells, Jr., in the capacity of executor, and, in answer to the demand of Mrs. Marie P. Evans for an accouunt, files herewith a tableau of the debts of said succession.

Executor represents that he is without funds and has never received one cent on account of said succession; that the entire property of said succession until recently consisted in a suit against Heyman and Robinson for the Quantico plantation; that a final judgment has been recently rendered in favor of the executor for said plantation, which he was proceeding to sell to settle the
1348 affairs of said succession, but has been prevented by an injunction from the circuit court of the U. States, at the suit of the plaintiff in this rule, who is seeking to get possession of the property of said succession without paying its debts. Executor, further answering, alleges that the pretended judgment recognizing Marie P.Evans as universal legatee of said succession and ordering that she be put in possession of said succession was rendered *ex partee* and in chambers and is an absolute nullity.

Wherefore he prays that the pretended judgment be declared null and void, and for costs and general relief.

R. J. BOWMAN,
Att'y for Executor.

Filed June 20th, 1876.

CHAS. MOORE, JR.,
Deputy Clerk.

A.

Tableau of Debts of Succession of S. D. Linton at This Date.

Privilege debts.

		$ Cts.
	Attorneys' fees for inventory	225 00
1349	Clerk's fees in, say, succession, about	75 00
	Printer's fees	25 00
	Commissioner on inventory	855 00
	Att'ys' fees in suit of hears of Linton to set aside proceedings	750 00

	$ Cts.
Admi'st'r *vs.* Heyman & Robinson	1,500 00
Att'ys' fees in suit of Wells, executor, *vs.* Evans	250 00
Attorneys' fees for application & appointm't of executor	25 00
Fee of R. P. Hunter in suit of Wells *vs.* Hawley	600 00
Cost paid by executor in various suits	35 00
	$4,390 00
To amount brought over	4,390 00
State and parish fees claimed to be due on the land	——

Executor represents that their are *these* large claims pending against the succession, one in favor of the La. State Bank for a judgement rendered in her favor for $8,666, with 8 % interest for fourteen years.

Another rendered in favor of the Bank of La. for $10,883, with 8 per cent. interest from 1861. Judgments were rendered in the 4th dist. court of N. O. There is also a judgment rendered in favor of Payne and Harrison for $8,000, with 8 % — from 2nd of Nov., 1858, in the 5th dist. court of East Baton Rouge, now pending in that court for revival.

Executor represents that the expences of said succession will
1350 be further increased from one to two thousand dollars, and that it is emperative that the property of said succession be sold unless the heirs furnish funds to meet the expences now due & unpaid.

R. J. BOWMAN,
Att'y for Executor.

Filed June 20th, 1876.

CHAS. MOORE,
Dep'y C'rk.

No. 248. *Petition of J. Madison Wells, Dative Testamentary Executor, for Sale.*

To the hon. parish judge of the parish of Rapides:

The petition of J. Madison Wells, of the said parish, in his capacity of dative testamentary executor of the succession of S. D. Linton, respectfully represents that is necessary to sell the property of said succession in order to pay its debts; that the property of said succession consists of a certain plantation or tract of land, called the Quantico plantation, situated in the parish of Rapides, on the
1351 east side of Bayou Boeuf, and containing the quantity of eighteen hundred acres, about eleven miles from Alexandria, at the mouth of Bayou Robert, bounded on upper side by Chambers land and on lower side by L'Esperance plantation, together with all the improvements thereon.

Petition- prays that an order of sale issue from your hon. court to

the sheriff as *ex officio* auctioneer to sell said property, after due and legal advertisement, upon the following terms, viz., cash.

R. J. BOWMAN,
Att'y for Ex'r.

Affidavit of R. J. Bowman.

Before me, the undersigned authority, personally came and appeared R. J. Bowman, atto'y for petitioner, who, being duly sworn, says that the parish judge is absent from the parish.

R. J. BOWMAN.

Sworn and subscribed before me 5th May, 1876.

J. OSBORN,
Dist. Judge.

Order of Sale.

The foregoing petition and affidavit being considered, it is therefore ordered that an order of sale issue as prayed for.

1352 This done and signed on this 5th day of May, A. D. 1876.

J. OSBORN,
District Judge.

Filed May 5th, 1876.

CHAS. MOORE, JR.,
Dep'y Clerk.

Petition of J. Madison Wells, Jr., in His Capacity of Executor.

Parish Court.

In the Matter of the Succession of S. D. LINTON, Deceased. No. 248.

To the hon. the parish judge of the parish of Rapides:

The petition of J. M. Wells, Jr., in his capacity of executor of said succession, respectfully represents that on or about the 11th day of May, 1876, petitioner obtained from your hon. court an order to sell the property belonging to said succession, consisting of the Quantico plantation; that said sale was enjoined by Marie P. Evans in the U. S. district court; that said injunction has been set aside

1353 by the consent of the said Marie P. Evans, and she now consents that said petitioner shall have said property.

That since said order of sale the circumstances which dictated a portion of said sale *has* changed, and said petitioner is now desirous of an order of sale without said conditions. Petitioner further represents that the said succession is largely in debt and a sale of said Quantico plantation, situated in said parish, on the east side of Bayou Boeuf, eleven miles from Alexandria, at the mouth of Bayou Robert, bounded on the upper side by lands of Chambers, on the lower side by L'Esperance plantation, and containing about eighteen hundred acres, together with all the improvements thereon.

Wherefore petitioner prays that an order of sale issue to the sheriff

of said parish to sell said property, after due advertisement, on the following terms, viz., cash.

R. J. BOWMAN,
Att'y for Executor.

Order.

The foregoing petition being considered, it is therefore or-
1354 dered that an order of sale issue as prayed for.
This done and signed on 12th Feb'y, 1887.

JOHN CLEMENTS,
Parish Judge.

Filed Feb'y 12th, 1877.

JAS. H. RAMESDEL.

Probate Sale.

Succession of S. D. LINTON.

Pursuant to an order of sale issued to me by the honorable parish court of the parish of Rapides in the above-entitled succession on the the 12th of February, 1877, I will sell at public auction, at the door of the court-house, in said parish, on Saturday, the 17th of March, 1877, between the hours prescribed by law, the following-described property, viz:

The Quantico plantation, situated in said parish, on the east side of Bayou Boeuf, about eleven miles from Alexandria, at the mouth of Bayou Robert, bounded on the upper side by the lands of Chambers, on the lower side by LaEsperanza plantation, containing
1355 about eighteen hundred acres, together with all the improvements thereon, the said property to be sold in lots of not less than ten acres nor more than fifty acres, according to a plat which will be exhibited on the day of sale. Terms of sale, cash.

Feb'y 14th, 1877.

H. M. ROBINSON, *Sheriff.*

Printer's fees, $6.00.

Order of Sale.

STATE OF LOUISIANA, }
Parish of Rapides. }

Parish Court.

Succession of S. D. LINTON. No. 248.

To the sheriff of the parish of Rapides, Greeting:

You are hereby commanded, in the name of the State of Louisiana, to sell, after due advertisement, for cash, for the payment of debts of the above-named succession, the following-described property, to wit: A certain plantation lying and being on the left de-cending bank of Bayou Boeuf, in Rapides parish, and known as the Quantico plantation, bounded above by lands of Josiah Chambers and be-

low by lands of L'Esperanze plantation, containing eighteen hundred acres, more or less, with all the buildings and improve-
1356 ments thereon; and when you have executed this order you make due returns of same to our said court as the law directs.

Witness the Honorable John Clements, judge of the said court, on 12th day February, 1877.

[L. S.] JAS. H. RAMSDELL, *Clerk.*

Returns of Sheriff.

SHERIFF'S OFFICE, RAPIDES PARISH,
LOUISIANA, *March 17th*, 1878.

As to the manner in which this order of sale was executed by me, see my process verbal on sheriff's deed this day executed and returned herewith to the court from which this order emanated.

H. M. ROBINSON, *Sheriff.*

Parish court, parish of Rapides.
Filed March 19th, 1877.

JAS. H. RAMSDELL, *Clerk.*

Sheriff'- Sale and Deed.

STATE OF LOUISIANA, }
Parish of Rapides. }

Process verbal.

1357 Be it remembered that by virtue of an order of sale to me directed by the honl. the parish court of the parish of Rapides and State of Louisiana in the matter of the succession of Stephen D. Linton and number 248 on the docket of said court, I, Henry M. Robinson, sheriff of the said parish and *ex officio* auctioneer, advertised the following-described property for sale at public auction, viz., the Quantico plantation, situated in said parish, on the east side of Bayou Boeuf, about eleven miles from Alexandria, at the mouth of Bayou Robert, bounded on the upper side by the lands of Chambers and on the lower side by L'Esperanza plantation, containing about eighteen hundred acres, together with all the improvements thereon; the said property to be sold in lots of not less than ten nor more than fifty acres, on the following terms, viz., cash; and having advertised the said property in the Louisiana Democrat, a weekly newspaper published in the town of Alexandria, which advertisement appeared in each and every number of said
1358 paper, to wit, Feb'y 14th, 21st, 28, March 7th and 14th, 1877, and being advertised more than thirty clear days previous to the day of sale to be sold on Saturday, the 17th of March, 1877, at the door of the court-house, when, on the said 17th of March, 1877, about the hour of 12, twelve, o'clock M., I repaired to the place above mentioned and exposed said property at public sale, having read in an audiable voice the order of sale and the advertisement and announced the terms of sale, and that the said property was sold sub-

ject to a lease for the year 1877, and that the sugar mill, kettles, and appurt-ances, having been placed upon said property by the lessor, were not included in said sale, and having exhibited the plat of said plantation which is hereto annexed, when Charles L. C. Dupuy became the purchaser of the following lots at their respective prices hereinafter stated, he being the last and highest bidder for each of said lots, viz:

Lot No. one, containing forty-five and one-half acres, at	$90 00
Am't bro't over, sale of lot No. 1	90 00
Lot No. 2, containing forty-five and one-half acres, nin-ty dollars	90 00
1359 Lot No. 3, containing forty-five and one-half acres	90 00
Lot No. four, containing forty-five and one-half acres, nin-ty dollars	90 00
Lot No. five, containing forty-five and one-half acres, nin-ty dollars	90 00
Lot No. six, containing forty-five and one-half acres, nin-ty dollars	90 00
Lot No. seven, containing forty-five and one-half acres, nin-ty dollars	90 00
Lot No. eight, containing forty-five and one-half acres, one hundred and eighty dollars	180 00
Lot No. nine, containing forty acres, at eighty dollars	80 00
Lot No. ten, containing forty acres, at eighty dollars	80 00
Lot No. eleven, containing thirty acres, at sixty dollars	60 00
Lot No. twelve, containing fifty acres, at one hundred dollars	100 00
Lot No. thirteen, containing fifty acres, at one hundred dollars	100 00
Lot No. fourteen, containing forty acres, at eighty dollars	80 00
Lot No. fifteen, containing fifty acres, at one hundred dollars	100 00
Lot No. sixteen, containing forty-five acres, at nin-ty dollars	90 00
Lot No. seventeen, containing twenty acres, at forty dollars	40 00
Lot No. eighteen, containing forty acres, at eighty dollars	80 00
1360 Lot No. nineteen, containing fifty acres, at one hundred dollars	100 00
Lot No. twenty, containing twenty acres, at forty dollars	40 00
Lot No. twenty-one, containing thirty acres, at sixty dollars	60 00
Lot No. twenty-two, containing fifty acres, at fifty dollars	50 00
Lot No. twenty-three, containing forty acres, at forty dollars	40 00

Lot No. twenty-four, containing fifty acres, at fifty dollars	50 00
Lot No. twenty-five, containing ten acres, at ten dollars	10 00
Lot No. twenty-six, containing thirty acres, at thirty dollars	30 00
Lot No. twenty-seven, containing forty acres, at forty dollars	40 00
Lot No. twenty-eight, containing twenty-four acres, at twenty-five dollars	25 00
Lot No. twenty-nine, containing twenty acres, at twenty dollars	20 00
Lot No. thirty, containing twenty-five acres, at twenty-five dollars	25 00
Lot No. thirty-one, containing fifty acres, at one hundred dollars	100 00
Lot No. thirty-two, containing thirty acres, at sixty dollars	60 00
Lot No. thirty-three, containing thirty-six acres, at three hundred and twenty-five dollars	325 00
1361 Lot No. thirty-four, containing twenty acres, at one hundred and eighty dollars	180 00
Lot No. thirty-five, containing twenty-five acres, at two hundred and twenty-five dollars	225 00
Lot No. thirty-six, containing forty —, at three hundred and sixty dollars	360 00
Lot No. thirty-seven, containing thirty acres, at two hundred and forty dollars	240 00
Lot thirty-eight, containing thirty-five acres, at two hundred and eighty dollars	280 00
Lot No. thirty-nine, containing forty acres, at four hundred dollars	400 00
Lot No. forty, containing fifty acres, at four hundred and fifty dollars	450 00
Lot No. forty-one, containing fifty acres, at four hundred and fifty dollars	450 00
Wood land.	
Lot No. one, containing forty acres, at forty dollars	40 00
Lot No. two, containing forty acres, at forty dollars	40 00
Lot No. three, containing forty acres, at forty dollars	40 00
Lot No. four, containing fifty acres, at fifty dollars	50 00
Lot No. five, containing fifty acres, at seventy-five dollars	75 00
Lot No. six, containing fifty acres, at seventy-five dollars	75 00
Total	$5,500 00

1362 The said sum amounting in the aggregate to the sum of five thousand five hundred dollars, of which said amount the sum of twelve hundred and thirty-two $\frac{88}{100}$ dollars, the amount of

the taxes, without the penalties due upon said property, is left in the hands of the purchaser to pay the same, there being no one to whom said taxes could be paid, the penalties, if any, to be paid by the succession; and the said Charles L. C. Dupuy having complied with the terms and conditions of said sale by the payment of the balance of said purchase price: Now, therefore, in consideration of the sums bid as aforesaid and the payments thereof as aforesaid, I, H. M. Robinson, sheriff of said parish and *ex officio* auctioneer, do now convey unto the said Charles L. C. Dupuy, he being present and accepting, the said forty-one lots of cleared land and the said six lots of wood land, comprissing the said Quantico plantation; to have and to hold the said described property to him, the said Charles L. C. Dupuy, his heirs and assigns forever.

In testimony whereof I hereunto set my hand officially, to-
1363 gether with the said purchaser, Charles L. C. Dupuy, on this the seventeenth day of March, anno Domini eighteen hundred and seventy-seven, in the presence of Waverlin E. Taylor and Christopher L. Ramsdell, competent witnesses, who also sign this act with me, sheriff.

H. M. ROBINSON, *Sheriff.*
CHARLES L. C. DUPUY.

Witnesses:
W. E. TAYLOR.
C. L. RAMSDELL.

Parish court, parish of Rapides, La.
Filed March 19th, 1877.

JAS. H. RAMSDELL, *Clerk.*

Petition — J. M. Wells, Jr., Executor.

Parish Court.

In the Matter of the Succession of S. D. LINTON. No. 248..

To the hon. parish judge of the parish of Rapides:

The petition of J. M. Wells, Jr., executor of the said succession, respectfully represents that he herewith files a provisional account of his executorship. Executor represents that said account only em-
braces the privilege claims, and is not final, as the amount of
1364 taxes due upon the property sold cannot be deffinitely accertained as the penalties may be remitted. In that event there will be surplus in the hands of the purchaser; and if they are not remitted it will consume the small balance left after paying the privileges.

Petitioner prays that due notice be given of the filing of said account, and after due proceedings that said account be h-mologated, and for costs and general relief.

R. J. BOWMAN,
Att'y for Executor.

Order.

The foregoing petition being considered, it is therefore ordered that due notice be given of the filing of the same.

Thus done & signed on the 9th of April, 1877.

JOHN CLEMENTS,
Parish Judge.

Filed April 9th, 1877.

J. H. RAMSDELL, *Clerk.*

Provisional Account of J. Madison Wells, Jr., Executor.

1365 J. M. Wells, Jr., executor of S. D. Linton

Provisional account.

1877.				
Jan'y 31.	To amount received for rent		$600 00	
March 17.	" " of prob. sale		5,500 00	
				$6,100 00
	By amount left in hands of purchaser to pay taxes		$1,232 35	
	Executor has paid the following claims as privilege of 1st rank:			
	1. H. M. Robinson, sherriff		42 90	
	2. John Delacy		42 90	
	3. Democrat for advertising sale		6 00	
	4. R. M. Bringhurst for plat		15 00	
	5. L. V. Mary for inv't'y		10 00	
	6. Charles Owens, clerk		35 00	
	7. J. H. Ramsdell		14 00	
	8. For brief in suit of Heirs *vs.* Suc.		10 00	
	9. For briefs in suit of Hawley *vs.* Hyman & Robinson		10 00	
	Executor proposes to pay the following additional claims as privileges of first rank:			
	10. J. M. Wells, com's as ex's adm'st'r		900 00	
	11. J. M. Wells, com's on col.		30 00	
	12. R. J. Bowman, fee on suit of heirs of Linton in district and supreme court		750 00	
	13. R. J. Bowman, fee in suit of Hawley, adm'r, *vs.* Hyman & Robinson		1,300 00	
	14. To R. J. Bowman, fee in suits Wells, ex., *vs.* Evans, Nos. 1168 & 1173		230 00	
1366	15. To William Grant, transfers of R. P. Hunter for fee in suits of Wells *vs.* Hawley, adms.		600 00	
	16. To Race, Foster and Merrick, fee in U. S. circuit court on suits of Evans *vs.* Wells		300 00	
	17. To J. H. Ramsdell, clerk		32 05	
	18. R. J. Bowman, fee for procuring sale, superintending & filing %		100 00	
			$5,879 25	$6,100
	19. Costs returned—returned to pay for future cost in filing and homologatin %.			

Executor proposes to return the said balance to meet any taxes which may be in addition to the amount left in the hands of purchaser, as said taxes may be less or more than said amount, and, if less, to distribute said balance and said surplus in hands of pur-

chaser in a final account to the following claims, as according to their bond, when the amount of said — is deffinately ascertained:

To the La. State Bank on a judgment rendered in her favor in 4 district court of New Orleans for $8,666, with *in'st* 8% interest thereon from 1862; to the Bank of La. on jud'g- rendered in her favor
1367 for $10,833.00 in the 4 dist. court of New Orleans, with 8% *per cent.* interest from 1861; to Charles Fenner on a judgment rendered in favor of Payne & Harrison for $8,000, with eight per cent. interest from 2 Nov., 1868.

R. J. BOWMAN,
Att'y for Executors.

Filed April 9th, 1877.

J. H. RAMSDELL, *Clerk.*

F.

Petition of Marie P. Evans, Testamentary Executrix and Universal Legatee, in Opposition to Provisional Account of J. M. Wells, Public Administrator.

Petition.

To the hon. the judge of the probates court, holding sessions in and for Rapides parish, Louisiana:

And now comes Marie P. Evans, testamentary executrix and universal legatee of the succession of S. D. Linton, deceased, and
1368 opposes the provisional account filed by J. M. Wells, public administrator in said succession, to wit:

1st. She opposes the items of $1,232.35, the amount left in the hands of purchaser to pay taxes, as the taxes do not amount to one-third of that amount.

2d. She opposes item 9 as unfounded, and also item 10, in favor of J. M. Wells, Jr., — excessive, ex*h*orbitant, and unfounded.

3d. She opposes item 12, fee of R. J. Bowman, as excessive and ex*h*orbitant.

4. She opposes item 13, fee of R. J. Bowman in suit of Hawley, administrator, *vs.* Hayman & Robinson, as excessive.

5. She opposes item 14, fee of R. J. Bowman in suit of Wells *vs.* Evans, as excessive and unfounded.

6. She opposes item 16, fee of Race, Foster and Merrick in U. S. circuit court, as being excessive and unfounded, and if there is anything due it should be assumed by R. J. Bowman.

7. She opposes item 18, fee of R. J. Bowman for $1,000.00, as being unreasonable and excessive.

8. She opposes claim of State Bank on a judgement in its favor in district court of New Orleans, for the reason that said debt is not due to the bank, and, if ever due, is prescribed.

1369 9. She opposes the claims of Bank of *of* Louisiana, the same not being due or collectable in law, and, if ever due, is prescribed.

10. She opposes the claims of Charles Fenner, founded upon a

judgement in favor of Payne & Harrison, for the reason that said judgement is null and void and has no foundation. Wherefore, premises considered, she prays that the whole account be set aside or that such claims, if any are allowed, be reduced to a reasonable and legitimate amount, and for general relief.

M. RYAN, *Att'y.*

Filed June 16th, 1877.

JAMES H. RAMSDELL, *Clerk.*

Petition and Opposition of the State National Bank of New Orleans.

Succession of S. DUNCAN LINTON. No. 248.

To the honorable the parish judge in and for Rapides parish, Louisiana:

The petition and opposition of the State National Bank of New Orleans, a corporation organized under the national banking
1370 law of the United States and domiciled in the city of New Orleans, Louisiana, with respect shows—

That your petitioner and opponent is the lawful successor of the Louisiana State Bank and is the successor to all the rights of the said corporation, charged with its liquidation, and is also the owner of all its property and assets; that the said Louisiana State Bank recovered a judgement against Stephen Duncan Linton, which judgement was signed on the 6th day of June, A. D. 1867, in the honorable the fourth district court for the parish of Orleans, in the cause or suit entitled Louisiana State Bank *vs.* Stephen D. Linton, and No. 17703 of the docket of said court, for the sum of eighty-six thousand six hundred and sixty-six $\frac{66}{100}$ dollars, with eight per centum per annum interest thereon until paid, on the sums and from the dates following, to wit:

On $10,833.33⅓ from 13th January, 1862;
On $10,833.33⅓ from 13th February, 1862;
On $10,833.33⅓ from 13th March, 1862;
On $10,833.33⅓ from 18th March, 1862;
On $10,833.33⅓ from 13 January, 1863;
On $10,833.33⅓ from 13 February, 1863;
On $10,833.33⅓ from 13 March, 1863;
1371 On $10,833.33⅓ from 18th March, 1863,

with twenty-six & $\frac{20}{100}$ dollars costs of protests, five per centum on said sum and interest thereon, as attorneys' commissions, and all costs of suit, and which judgment was rendered on the first day ——, A. D. 1867. Petitioner and opponent further shows that in said judgement a special and conventional mortgage was recognized and declared enforced in favor of your petitioner and opponent for the amount of the said judgment upon the following-described property in the parish of Rapides, Louisiana, to wit: A certain plantation known by the name of the Quantico plantation, situated in said parish, on the east side of Bayou Boeuf, and containing about eighteen hundred acres, the said plantation lying at the mouth of Bayou Robert, about twelve miles from the town of Alexandria, and being bounded

on the upper side by lands of Chambers and on the lower side by L'Esperanza plantation, of the late John Linton, deceased, together with the buildings and improvements thereon, the engines,
1372 machinery, and apparatus, stock, cattle, horses, mules, farming utensils, and implements of husbandry on the said plantation, the said mortgage thus recognized and declared executory being the one executed by the said S. D. Linton in favor of Messrs. W. & D. Urquhart by act passed before Theodore Guyol, notary public, on the 27th day of December, 1859, which was given to secure certain promissory notes, on eight of which the above-mentioned judgement was rendered.

Petitioner and opponent now alleges that said mortgage, as well as the said judgment, are duly and legally recorded in the said parish of Rapides and constitute both a conventional and judicial mortgage on the said Quantico plantation and on the proceeds thereof in favor of your petitioner, dating and taking rank as such mortgage from the — day of ——, A. D. 18—.

Petitioner and opponent shows that the said mortgages have been kept reinscribed, as the law provides, and that the said judgement has not been permitted to prescribe or pre-empt the same,
1373 having been revised as the law provides; all of which will more fully appear by reference to the duly certified copies of the said judgment, with a duly certified copy of the act of mortgage and the date and certificate of its inscription and reinscription, all annexed to and made a part of this petition and opposition.

Your opponent opposes the payment of the following claims, which the executor, J. M. Wells, Jr., in his provisional account, proposes to pay, viz:

1. Opposes items Nos. 10 & 11 in said account for nine hundred and for thirty dollars, respect*fully*, to J. M. Wells, commissions as executor and to commissions on collections, because the same are ex*h*orbitant and excessive and without warrant and are not justified, and because O. K. Hawley, former executor, was paid four hundred dollars on this account for commissions.

2. Opposes items 12, 13, 14, and 18 on the said provisional account for seven hundred and fifty dollars, for fifteen hundred dollars, for two hundred and fifty dollars, and for one thousand dollars, respectively, to R. J. Bowman, att'y fees by him claimed, as being excessive, ex*h*orbitant, and not authorized in such cases, and
1374 under the facts and circumstances not warranted.

3. Opposes item No. 15 on the said provisional account for the sum of six hundred dollars as attorney's fees due R. P. Hunter, Esq., transferred to William Grant, Esq., in the suit of Wells *vs.* O. K. Hawley, because the same is excessive & ex*h*orbitant and not justified, and under the facts and circumstances not warranted.

4. Opposes item No. 16 on said account for the sum as attorneys' fees due to Messrs. Race, Foster & Merrick, because the same is excessive and ex*h*orbitant, and if allowed for any part or portion should be assumed and discharged by the attorney for the succession, R. J. Bowman, Esq., out of the fees allowed him in this case.

5. Opposes item 19 in the said account as being vague and un-

certain and because no amount is specified as likely required to meet the charge therein mentioned. Wherefore your petitioner and opponent prays leave of the court to file this opposition to the provisional account filed April the 9th, 1877, by J. M. Wells, Jr., executor
of the succession of Stephen Duncan Linton, deceased, and
1375 that after due proceedings had in the premises your petitioner
and opponent be ranked and classed as the first-mortgage creditor on the property above set forth and described, and upon the proceeds of the same for the sums, costs, interest, and commissions as adjudged and decreed in the judgment above set forth and described.

It is further prayed that this opposition to the items in the said provisional account herein opposed be sustained, and that the said account be not homologated and made the judgment of this court, and that the claims and charges herein approved be refused and rejected, or, if allowed for any amount, that the same be fixed at reduced, reasonable, and legitimate sums or amounts; as in duty bound, &c., your opponent prays.

J. G. WHITE, *Attorney.*

Filed Jan'y 28th, 1878.

C. L. RAMSDELL, *Dep. Clerk.*

Petition and Opposition — Charles E. Fenner.

Succession of S. DUNCAN LINTON. No. 248.

1376 To the honorable the parish court in and for the parish of Rapides, Louisiana:

The petition and opposition of Charles E. Fenner, a resident of the city of New Orleans, with respect shows—

That your opponent is the transferee and owner of the certain judgement rendered in the honorable fift- judicial district court in and for the parish of East Baton Rouge, Louisiana, entitled Payne and Harrison *vs.* John Perkins and S. Duncan Linton, and number 24 of the docket of said court, and which judgement was rendered on the 13th day of Ma-ch, A. D. 1862, for the sum of eight thousand dollars, $8,000.00, against the said defendants, with eight per centum per annum interest thereon from the 23d day of November, A. D. 1858, and seven $\frac{50}{100}$ dollars, costs of protests, & cost of suit.

We further represent that the said judgement was revived by a judgement of revival of said court signed on the 6th day of April,
1872; all of which will more fully appear by reference to the
1377 said judgements and records, duly certified, from the said fifth
judicial district court, annexed to and made a part hereof; and now your opponent opposes the provisional account filed on 9th April, A. D. 1877, by J. M. Wells, Jr., executor of the said succession of S. Duncan Linton, who has died since the rendition of said judgement, as above set forth, for the following reasons, to wit:

1st. Opposes item- 10 & 11 on said accounts for nine hundred dollars and for thirty dollars, respectively, to J. M. Wells, Jr., commissions as executor and commissions as collections, because the same are

exhorbitant, excessive, and without warrant and not justified, because O. K. Hawley, former executor, &c., was paid four hundred dollars, $400.00, on this account for commissions.

2. Opposes items Nos. 12, 13, 14, and 18 on the said provisional account for seven hundred and fifty dollars, for fifteen hundred dollars, for two hundred and fifty dollars, and for one thousand dollars, respectively, to R. J. Bowman, Esq., attor'y fees by him claimed, as being excessive, exhorbitant, and not authorized
1378 in such cases, and under the facts and circumstances not warranted.

3d. Opposes item No. 15 in said provisional account for the sum of six hundred dollars as attorney's fees due R. P. Hunter, Esq., transferred to William Grant, Esq., in the suit of Wells *vs.* O. K. Hawley, because the same is excessive and exhorbitant and not justified, and under the facts and circumstances not warranted.

4. Opposes item No. 16 on the same account, for the sum of twelve hundred dollars as attorneys' fees due to Messrs. Race, Foster and Merrick, because the sum is excessive, exhorbitant, and, if al-owed for any part of portion thereof, should be assumed and discharged by the attorney for the succession, R. J. Bowman, Esq., out of the fees allowed him in this case.

5. Opposes item No. 19 in the said account as being vague and uncertain, because no amount is specified as likely required to meet the charges therein mentioned.

Wherefore your petitioner and opponent prays leave of the court to file this opposition to the provisional account filed April 9th,
1379 1877, by J. M. Wells, Jr., executor of the succession of Stephen Duncan Linton, deceased, and that after due proceedings had in the premises your petitioner and opponent be ranked and classed as the first-mortgaged creditor upon the proceeds of the sale of the Quantico plantation, sold on March 17th, 1877, the same being the property belonging to the succession of the deceased, S. Duncan Linton, for the sum, costs, — interest as decreed in the judgment above set forth and described.

It is further prayed that this opposition to the items on said provisional account herein opposed be sustained, and that the said account be not homologated and made the judgment of this court, and that the claims and charges herein opposed be refused and rejected, and if al-owed for any amount that the same be fixed at reduced, reasonable, and legitimate sums or amounts; as in duty bound your opponent prays.

A. CAZABAT, *Attorney.*

Filed June 28th, 1878.

C. L. RANSDELL, *D'y Clerk.*

1380 *Note of Testimony.*

Parish Court. Probate Term, January, 1878.

Succession of STEPHEN DUNCAN LINTON. No. 248.

On trial of opposition of State National Bank and Chas. E. Fenner.

Testimony for Executive.

R. J. BOWMAN, sworn, says: Notice of the filing of the account in this case was duly advertised in the Louisiana Democrat for more than ten clear days.

Offered depositions of E. T. Merrick, G. W. Race, Finney, and Huntington.

ROBERT P. HUNTER, sworn, says: I am practicing attorney, and have been since 1869. I remember the litigation refer-ed to in item 12 of the account and constituting record No. 5021, in the supreme court, entitled the succession of Stephen Duncan Linton. I recollect that Judge Manning represented the sisters of Linton and opposed the *the* administration of Hawley on the ground that this court was without jurisdiction. The litigation was hotly
1381 contested. Case was tried in the district and supreme court and a final judgment rendered in favor of the admin't'r, represented by Mr. Bowman. I think $500.00 would be a moderate fee, and I do not consider $750.00 charged excessive. I remember litigations in suits No-. 1168 & 1173, in the parish court, and I think $250.00 reasonable and just.

One, item 15 of the account: Gov. Wells filed a suit against the succession, in which — claimed $8,540.00, with 8% per annum interest from January, 1867. This suit was filed Nov. 7th, 1871, and made nearly $12,000.00 he claimed. Mr. Hawley, public administrator, approached me to defend that suit. I told Mr. Hawley that unless he would let me defend it in fact I would not take the case, and that if he expected to play in the hands of Gov. Wells I would have nothing to do with the suit. He agreed to these terms, and we consented as to my fees then and there, and before I had taken any action in the case Mr. Hawley and myself had the following agreement as to my fee: That I was to attend to the case in the district court and the supreme court, and if the final judgement
1382 was against the succession of Linton I was to be paid a fee of $300.00; if it was in favor of the succession I was to be paid a fee of $500.00. I did attend to the case in both courts, and the final judgement was in favor of the succession of Linton, respecting the demand of pl'ff. This suit of J. Madison Wells *vs.* O. K. Hawley is No. 176 of D. C.

The*ir* was pending in the district court at the same time suit No. 1793, entitled William Morris *vs.* Orestus K. Hawley, administrator, succession, of Stephen D. Linton, in which pl'ff claimed $600.00, with legal interest from January 1st, 1856, until paid, making about

$1,000.00 due him. Hawley employed me to defend that suit, with the expectation that it would also go to the supreme court. I had the case assigned for trial in the district court, and on the day of trial, the pl'ff failing to appear, was called to prosecute the suit, and failing to appear the suit was dismissed. My recollection at this time is that my arrangements with Hawley was that I was to have
1383 $100.00 for attending to that case in both courts if the succession lost and $200.00 if the succession won. I am positively certain that $100.00 was to be the minimum fee. When the suit was dismissed in the district court I made the minimum charge of one hundred dollars, $100.00. These two fees together make up the $600.00 charged as item 15 in the account, and transferred by me as therein stated. After these suits were decided Mr. Hawley and I had a thorough understanding that there was $600.00 due me, to be paid in the course of administration.

The item of $100.00, No. 18 on the account, instead of being excessive is too small. Two hundred and fifty dollars would not have been too large a fee for the services therein charged, including the trial of these oppositions.

Cross-examined:

O. K. Hawley, public administrator, employed me to defend suits 1769, 1793, D. C. Hawley was the public administrator, and as such was administering the suc'n of Linton and was the defendant in these suits. I transferred my fees in these cases to Mr. Grant last
last February. Rouse and Grant or Mr. Grant was having
1384 considerable to do in settling suc'n, and last February had visited Rapides for that purpose. He thought and we all thought — had effected it.

When I went down to supreme court he was on boat returning to New Orleans. I knew of his having settled a claim for Mrs. Evans, and I proposed to him he might have my claim for these fees for $250.00. I made out a statement of my fee, and he paid me $250.00, and I transferred it to him. It was considered at the time that all litigations in this succession had — be settled, and it was only a question of time when the success- would be in funds with which to pay this $600.00 as a privileged claim. Neither Mr. Grant or myself had any idea that a fee that had been fairly and honestly earned and had been duly acknowledged by the admi'st'r and placed as a privileged claim on the tableau filed months before this transfer would or could be ever disputed or could possibly be considered as a litig-ous right. I would never have sold it to him. I would have been willing to take less rather than wait on the succession for money.

1385 Opponent's co-nsul moved to strike out all that portion of the above answer as to what was the consideration of the transfer to Mr. Grant.

By the COURT:

The motion to strike out refused for the reason that witness had a right to explain his reasons for making said transfer.

Cross-examination continued:

In fixing an atto-ney's fee in any case the amount involved, the the trouble and labor to be performed, the responsibility to be incurred, the character and length of the litigation, and all elements determining the amount of a lawyer's fee —. The charges are large- in suc'sion matters than in ordinary litigations. The fee in a succession may be large and fair that would be ex*h*orbitant in ordinary litigations.

In a succession, where the labor, the responsibility, the delay, and other circumstances — equal, I should charge twice as much in the greater as I would in the smaller, but in neither should I be willing to take the sale of the property as a criterion by which to fix my fee.

Re-examined:

1386 I am acquainted with Quantico plantation. It was sold at sheriff's sale in 1869 for $16,800.50 and resold by the purchasers for $30,000—$5,000.50 cash, the balance on 5 years' time, with interest from date of sale.

Offered the tableau of debts previously filed in this record, filed June 20th, 1876, marked "A," vouchers one, two, 3, 4, 5, 6, 7, & 8.

R. J. BOWMAN, recalled, says:

I paid the vouchers to the respective parties named in the account. I paid item 8. It was $8.00 instead of $10.00. Item 9 was brief against Heyman & Robinson: It is correct.

Offers inventories annexed to the commission; item 12, R. J. Bowman's fee in suit of heirs of Linton in the district and supreme court-.

In this suit involved the entire succession, and was an attempt on the part of these heirs to dismiss these proceedings from this court. This case was litigated and involved the whole succession. Considerable amount of testimony was taken and a great deal was sought for to establish*ed* the residence of Mr. Linton in this
1386½ parish which does not appear in the papers. I do not think that $500.00 *dollars* in the probate court and $250.00 in the Supreme Court an u-reasonable fee. The services rendered therein were entirely contingent upon the success of the suit. Item 13: I concur entirely in the testimony given by Merrick, Race and Finney and Huntington when that suit was brought. The property was estimated to be worth $20.00, and the suit was involved—the suit and revenues from the time of purchase by the defendant up to the decision of the case.

Off'rs act of sale from Dupuy to Charles L. Robinson, with leave to furnish copy.

Item 14, $250.00 for fees in suit- No. 1168 & 1173: I think the fee charged there is a very low one, and was charged because the litigation was an exceedingly hard one upon the succession, being caused by an *ex partee* and illegal order of the parish court in ren-

dering an *ex partee* judgment and issuing a writ of possession on it, and threatening — from our possession the only property belonging to the succession. It caused a great deal of trouble and anx-
1387 iety, and especially — Mr. Robinson, the tenant of the property at that time.

Offered the writ of possession and sheriff's return.

There was also a motion made to remove these cases to the United States court.

Offered in evidence suit- No. 1168 & 1173, parish court.

Offered the petition, answer, and judgement of district court and judgement of supreme court and the documents sued on in suit No. 1769, D. C., J. M. Wells *vs.* O. K. Hawley.

Offered suit No. 7793, D. C., William Morris *vs.* O. K. Hawley, administrator; record introduced in evidence.

R. J. Bowman says the item No. 19, $100.00 — for procuring sale, superintending and filing this account. This charge was made on the supposition that there would be no opposition to this account, and that the litigation was at an end. $250.00 would be a moderate fee in its stead.

Offered pleadings in suit 1171, pertaining to the suit of the heirs of Duncan Linton to divest this court of jurisdiction of the succession.

R. J. Bowman says item 15 is a reasonable fee for defending
1388 those two suits. It is a low fee. I represented the plaintiff in that suit and am well acquainted with the services rendered by R. P. Hunter.

Cross-examined:

It is usual to make an additional charge in a succession matter for filing the account. It is usual to make a charge as per item 18 in this account. The contest in this suit of the heirs of Linton, No. 5621 of the supreme court, was to divest this court of jurisdiction on the ground that Linton never resided in Rapides parish, and they further asked to be put in possession of the property, in event that the court had jurisdiction. The suit of O. K. Hawley *vs.* Heyman and Robinson was a petitionary action for Quantico plantation. The plantation known as Quantico is the only property involved in the S. D. Linton succession—at least, all involved in that succession since I had anything to do with it. A lawyer's fee is governed in every case in some measure by the amount involved.

10 per cent. is the usual fee in the district court for the suc-
1389 cessful prosecution of the suit. This percentage is usually based upon the estimated value of the property, and I know of no rule which requires an attorney to attend to a second suit, involving the same property, for nothing, whether the property belonged to a succession or individual.

Re-examined:

The rule in succession matters, as I have understood it, is to charge a retainer, and then to charge for such services outside of the mortuary proceedings as may arise in the administration. There would be no reason in his charging or in his regulating his charges by the amount of the succession without regard to the professional labors, if there was no suits outside of the ordinary proceedings. A retainer might cover his fees in this case. I have omitted to charge any retainer.

J. M. Wells, Jr., as public administrator, is administering this succession as its dative testimentary executor. He succeeded O. K. Hawley.

Testimony for administration closed.

1390 *Opponents' Testimony for "Charles Fenner" — State National Bank.*

Judge W. F. BLACKMAN, sworn, says:

I have been a practising lawyer for fifteen years, or rather since the close of the war. There is no established rule for fixing the charges of att'ys in succ'ss'n matters. The amount of the property of the succession and the litigation that is connected with it are tak*ing* into consideration in fixing the fees of the counsel.

My usual charges were 5% *per cent.* upon the amount of the inventory, unless it was a very large succession or a very small one. If it was very large I charged less, and if very small I charged more.

This was opening the succession, having letters of administration issued, fixing all accounts, tableau, &c., until the close of the succession. When there were litigated cases against the succession that required additional labor I usually made an additional charge.

1391 Witness is handed the record No. 1171 of the district court, being No. 5621 of the supreme court of La., and being for item No. 12 on that account, and is asked to examine the said record and state what the fees of R. J. Bowman are worth for defending that suit in the district and supreme courts. Witness says:

That depends entirely upon the fact whether the counsel that represented the public adminstr. made other charges for att'y's fees connected with said succession. If he had charged 5% *per cent.* atto'y's fees as a retainer upon the amount of the inventory, which is $18,000.00, this litigation ought to be included in that fee and no additional charge ought to be made for it.

Witness examines records Nos. 1168 & 1173, which is item No. 14 on the account.

Witness says there ought to be no additional fee charged for this litigation outside of the 5% *per cent.* upon the amount of inventory of $18,000.00.

Witness being handed suit No. 1744, entitled O. K. Hawley *vs.* Abram Heyman *et al.*, and being item No. 13 of the account opposed herein, says he is thoroughly conversant with this liti-
1392 gation, and it involved the title to the Quantico plantation, which was nearly all the valuable part of the lands and aforesaid succession.

Witness states that it is a reasonable fee. Bringing this suit and attendance of it in this and supreme courts is well worth the sum of seven hundred and fifty dollars to nine hundred in addition to the 5% *per cent.* on amount of inventory.

I don't think that succession of this size in all the litigations that is connected therewith that the alleged fees should exceed $1,500 to $1,800. I think this would be a very reasonable and just compensation for all the litigations with which I am conversant, and representing the administrator in all acts from the opening of the succession to its close.

This would be a very large fee were it not for the fact that there has been a great deal of litigation connected with said succession, which litigation succeeded in restoring all property or inventory of the said succession which had been illegally disposed of. The Louisiana Bank held mortgage notes against the Quantico
1393 plantation. They obtained a writ of seizure and sale and sold said plantation. The supreme court decreed said sale to be null and void.

This suit was instituted by the public administrator after this sale. O. K. Hawley, public administrator, qualified after this sale had been made. When I fixed fees as above it is for all the litigations connected with the succession in the parish of Rapides. I know nothing of the matter in the U. S. dist. court and cannot tell what the services therein was worth; should be over and above the fee fixed for services in this parish.

The value of real estate has, as a general thing, been depreciating in value since 1868 down to the present time.

Cross-examined:

I know that the fees of the public administrator and atto'y depend entirely upon his success in this litigation.

I understand that Mr. Robinson, in the suit of O. K. Hawley *vs.* Abraham Heyman *et al.*, has paid his att'ys $780.00, being ten (10) % of the am't of costs realized from the bank culled in warranty by Robinson. Robinson was the owner of ½ of the property in litigation.

1394 The fee in suits No-. 5621, supreme court, & 1171, district court, I think the attor'y might be allowed a fee of some $5,000.00 for attending the supreme court in addition to the regular charge. The suit of O. K. Hawley *vs.* Heyman *et al.* was a very litigated case and required a great deal of professional labor.

It is agreed that if this case should go to the supreme court that the judges may examine the record now on file in the supreme court in the suit entitled O. K. Hawley, public administrator, *vs.* Abra-

ham Heyman *et al.*, and No. 6186 on the docket of the supreme court of La., as a part of the testimony offered by the opponents, Charles Fenner and the State National Bank.

It is admitted that Charles Fenner is the owner of the judgment of Payne and Harrison *vs.* Perkins and Linton, No. 24, 5th district court, East Baton Rouge, La. The attorney for the administrator, having the act of transfer in his hand at present, also holding in his hand the records of revival of the suit of Payne & Harrison against Geo. Perkins & S. D. Linton, admits that the said judgment has been revived and is not prescribed and is for the sum of
1395 $8,000.00, with 8 % interest thereon from the 23d day of November, 1858, and is against the said Perkins and Linton *in solido.*

This admission is made for the purpose of avoiding *and* encumbering the records with documents themselves. For the purpose of avoiding *and* encumbering the records it is admitted that the State National Bank of N. O. is the successor and transfer-er and owner of the judgment in the suit of The Louisiana State Bank *vs.* S. D. Linton, No. 17763, 4th district court of New Orleans, La., and that there has been a judgment of revival rendered in said suit, certified copies of said evidence being now before me, the attorney for the succession.

It is further admitted that the amount of the said judgment is correctly stated in the opposition herein filed by the State National Bank.

It is also agreed that the supreme court may examine as a part of the testimony in the case *of* the record in the supreme court No. 5621, entitled the succession of S. D. Linton, and which record is stated to be lost by Judge Merrick and other witnesses.

1396 It is agreed that in making up the transcript in this case to use only such papers as may be designated by counsel which are now in the envelope 248, entitled the succession of Stephen D. Linton for probate of will.

Testimony for opponents, Charles Fenner and the State National Bank, close-.

R. A. HUNTER, sworn in rebuttal, says he is a practicing attorney at this bar. I am acqua-nted with the litagation of O. K. Hawley *vs. O. K. Hawley vs.* Heyman & Robinson, having once had occasion to examine all that controversy. Soon after the action was commenced by the public administrator to set aside the sale made by the bank to Heyman & Robinson I was employed by A. Heyman & Co. to represent their interest. I examined the whole record very thoroughly and told Mr. Heyman I was satisfied that he had no title, or, in other words, that the sale to him would be set aside; that I would charge him a $1,000.00 to represent his interest in the matter
1397 as against the bank, understanding that the attorney representing Robinson was to get $1,000.00, telling him at the same time all that I could do was to call the bank in warranty and have his money returned to him, telling him that I was satisfied that the sale to him was illegal. Suit of Heirs of Linton *vs.* Admin-

istrator of Linton & No., in transcript of the supreme court, 5621 was a good deal of labor in this suit in the probate court and supreme —, and I would not have undertaken it for less than $1,000.00.

Cross-examined:

In the suit refer-ed to above it was a contest between the public admi-strator and the heirs of Linton and public administrator of New Orleans as to who should have the control of the succession.

Offers the tax receipts to sustain the amount of taxes left in the hands of the purchaser.

It is admitted that J. M. Wells, present executor and dative administrator, claims commissions at 5% on the Quantico plantation, inventoried at $24,000.00, in 1870.

1398 Testimony closed January 31st, 1878.

JAS. H. RANSDELL, *Clerk.*

It is further admitted that J. Madison Wells was appointed public administrator in 1873, and that he has been administering the said succession as such since July 7th, 1873.

Testimony Taken under Commissions, Together with Documents Annexed.

UNITED STATES OF AMERICA,
The State of Louisiana, Parish of Orleans, City of New Orleans.

Depositions of witnesses taken and subscribed before me, J. Paris Childress, first justice of the peace for the parish of Orleans, in the State of Louisiana, duly elected, sworn, commissioned, and acting as such, on the 7th day of January, A. D. eighteen hundred and seventy-eight, between the hours of 9 o'clock a. m. and 4 o'clock p. m. of said day, in the city of New Orleans, parish of Orleans and State of Louisiana, in pursuance *to* a commis-
1399 sion hereto annexed and to be read as evidence in a certain cause now pending in the parish court, parish of Rapides, State of Louisiana.

In the Matter of the Succession of S. D. LINTON.

E. P. MERRICK, G. W. RACE, E. W. HUNTINGTON, and JOHN FINNEY witnesses on the part of the execution of said succession—witnesses known to me to be of lawful age—being to me at the time and place aforesaid produced and being by me first duly sworn according to law to testify the truth, the whole truth, and nothing but the truth in regards to the matters in controversy in the aforesaid suit, did there and then, on their oaths aforesaid, depose, say, and answers as follows, to wit:

Commissions.

STATE OF LOUISIANA, }
Parish of Rapides. }

Parish Court. No. 248.

To any judge or justice of the peace in the parish of Orleans or city of New Orleans and State of Louisiana, Greeting:

Know ye that we, reposing confidence in your prudence
1400 and fidelity, do by these presents give unto you authority diligently to examine John Finney, E. W. Huntington, G. W. Race, Rob't Mott, and E. P. Merrick in a certain suit, now pending in our court, in the matter of the succession of S. D. Linton on the part of the executor of said succession.

Therefore we desire you, at certain times and places by you to be appointed for that purpose, to cause the said witnesses to come before you; that you there and then examine them upon oath first duly administered according to law; that you reduce said examination to writing, and when you have thus taken the same that you send it, closed up under your seal, to us in our said court, at the court-house, in the town of Alexandria, parish of Rapides, on or before the fourth Monday of November, 1877; and have you then and there this commission.

L. S. Witness the Honorable John Clements, judge of said court, this 7th day of November, A. D. 1877.

C. L. RAMSDELL, *D'y Clerk.*

1401 *Prayer and Petition of the Executor, Succession of S. D. Linton, to Take Testimony.*

In the Matter of the Succession of S. D. LINTON.

In this case the executor comes and prays that a commission may issue to any judge or justice of the peace in and for the parish of Orleans or city of New Orleans to take the testimony of John Finney, E. W. Huntington, G. W. Race, Robert Mott, and E. T. Merrick, whose answers to the following interrogations will be offered in evidence on the trial of the opposition to the final account filed in this succession:

Interrogatory 1st. Are you or are you not a practicing attorney and counselor at law; if yea, how long have you pursued said profession?

Interrogatory 2d. Please to examine the record and suit in the United States circuit court, No. 7672, and entitled Mary P. Evans and William R. Evans, complainants, *vs.* David Urquhart and J. Madison Wells, Jr., defendants, and state what is a reasonable
1402 fee for defending the portion of said suit brought against the representatives of succession of suc'r of S. D. Linton.

Inter-og-tory 3d. Is or is not the sum of three hundred dollars a very moderate amount for the legal services rendered said succession by the attorneys respresenting it in said suit?

Interrogator- 4th. Please examine the inventories and the record and transcript of the suit on appeal in the supreme court of La. entitled the succession of Stephen Duncan Linton and numbered No. 5621, and state what is a reasonable fee for defending said suit in the parish court and supreme court.

Interrogat-ry 5. Is or is not the sum of seven hundred and fifty dollars an unreasonable charge for said services?

Interrogatory 6th. Please to examine the inventories annexed and the record and transcript of the suit of O. K. Hawley, public administrator, *vs.* Abraham Heyman *et al.*, in the supreme court of La., numbered 6186, & state what would be a reasonable fee for prosecuting said suit in the district and supreme courts and executing the judgement.

1403 Interrogatory No. 7. Is *is* not the sum of fifteen hundred dollars a reasonable fee for said services?

Inter-ogatory 8. Is or is it not customary in the profession to charge higher fees in suits in which those fees depend upon the success of the suit or are not paid until the end of the litigation?

Intor-ogatory 9. Is or is not the attorney of a succession entitled to charge for special services, such as prosecuting and defending protracted suits, in addition to a general retainer?

Inter-ogatory 10th. Do you or do you not know anything more that will benefit the plaintiff in these inter-ogatories? If yea, state the same as fully as if inter-ogated thereon.

R. J. BOWMAN,
Att'y for Executor.

Cross-Inter-ogatories.

Reserving all legal objections, the creditors of the succession of Stephen Duncan Linton propound to each witness testifying in this case — inter-ogatories:

1 X Inter-ogatory. State, if you please, if an attorney's
1404 fees in a succession are not governed as to the amount charged by the value and the amount of the property belonging to the succession.

2 X Inter-ogatory. If you say the attorney's fees are control-ed or governed by the amount and value of the succession property, state what would be a just and fair — for an attor'y — the succession whose property sold for six thousand dollars.

3 X Inter-ogatory. In this case there has been much litigation. At the end the property was sold for fifty-five hundred dollars. You will please state what the attorney for the succession should be paid; also whether other attorneys employed by him or the administrator should be paid additional fees; &, if so, state the amount.

J. G. WHITE,
Attorney for Chas. Fenner et al. and State National Bank.

I propounded the same cross-inter-ogations.

M. RYAN,
Attorney for Mrs. Evans.

1405 *Order.*

The foregoing petition being considered, it is therefore ordered that a commission issue as prayed for, returnable on or before the fourth Monday of November, 1877.

Nov. 7th, 1877.

JOHN CLEMENTS,
Parish Judge.

"Inventory."

Succession of STEPHEN DUNCAN LINTON. No. 248.

STATE OF LOUISIANA, }
Parish of Rapides. }

Be it known that on this the fourteenth day of August, A. D. 1875, pursuant to a commission from the honorable the parish court holding sessions in and for the parish of Rapides and State of Louisiana, the same to me directed and hereto annexed, authorizing and empowering me to take an inventory and appraisment of the property, real and personal, rights, and effects belonging to the succession of Stephen Duncan Linton, late of this parish, deceased, I, Louis
1406 V. Marye, a notary public in and for the parish of Rapides and State of Louisiana, duly commissioned and qualified according to law, proceeded to take the said inventory in the manner and form as follows, to wit:

Messrs. John Clements and J. R. Andrews being duly appointed appraisers, I, notary, administered to them the oath prescribed by law as follows, to wit:

We, the undersigned, appraisers, do solemnly swear that we will well & truly and to the best of our knowledge and understanding value the property, real and personal, rights, credits, and effects belonging to the succession of Stephen Duncan Linton, so help us God.

JOHN CLEMENTS.
JOHN R. ANDREWS.

Sworn and subscribed to before me this the 14th day of August, A. D. 1875.

L. V. MARYE,
Notary Public.

The two competent witnesses were Messrs. Jno. M. Barrett and J. C. French, and in their presence I made the following inventory:

All the right, title, and interest now pending on appeal be-
1407 fore the supreme court of the State of Louisiana in and to a certain tract of land situated in Rapides parish, State of Louisiana, and known as the Quantico plantation, being about

twelve miles from the town of Alexandria, on the east side of Bayou Boeuf, and containing the quantity of eighteen hundred acres of land, together with all the buildings and improvements thereon.

The Quantico plantation is appraised at $18,000.00, eighteen thousand dollars.

We know nothing as regards the interest of the succession.

There being nothing more to enter herein, I close the same.

In testimony whereof the appraisers and witnesses aforesaid have signed their names, together with me, notary, on the day and date first above written.

JOHN CLEMENTS.
J. R. ANDREWS.

Witness:
JOHN M. BARRETT.
J. C. FRENCH.

L. V. MARYE,
Notary Public.

Filed August 16th, 1875.

CHAS. OWENS,
Dep'y Clerk.

1408 *Certificate.*

STATE OF LOUISIANA, }
Parish of Rapides. }

I hereby certify the above and foregoing to be a true and correct copy of the original on file and of record in suit No. 248, entitled Succession of Stephen Duncan Linton.

In testimony whereof witness my official signature and seal of office this 6th day of November, 1877.

C. L. RANSDELL,
Dep'y Clerk.

Appointment and Oath of Micheal Legras & John Clements, Appraisers.

STATE OF LOUISIANA, }
Parish of Rapides. }

Be it remembered that on this twentieth day of September, 1870, in pursuance to a commission from the honorable the parish court in and for the parish of Rapides, State of Louisiana, and to me directed, I, C. V. Ledoux, a notary public in and for the parish of Rapides, duly commissioned and qualified, having appointed
1409 Micheal Legras and Mr. John Clements, both residents of the said parish and State, appraisers, I administered to them the following oath, to wit:

STATE OF LOUISIANA, }
Parish of Rapides. }

I do solemnly swear that I will well and truly appraise and the true cash value place upon all and singular the property, real and

personal, rights, credits, and effects belonging to the estate of Stephen Duncan Linton in said parish and State that may be pointed out to me to the best of my ability and understanding, so help me God.

MICHEAL LEGRAS.
JOHN CLEMENTS.

Sworn and subscribed before me this the 20th day of Sept., 1870.

C. V. LEDOUX,
Notary Public.

Wherefore we, the said notary and appraisers, in presence of Alphonso Battie and W. S. Binghurst, proceed to make and sign the following inventory and appraisement, to wit:

A certain plantation or tract of land called Quantico,
1410 situated in the parish of Rapides, on the east side of Bayou Boeuf, and containing about eighteen hundred acres, about twelve miles from Alexandria, at the mouth of Bayou Robert, bounded on the upper side by the Chambers land and on the lower side by the L'Esperanza plantation, together with all the buildings and improvements thereon; appraised 1,500 acres, fifteen dollars per acre, and 300 acres at $15.00 per acre, amounting to $24,000.00.

A tract of pine land about four miles from Quantico, bounded east by lands of A. Duffill's succession, west by Ralph S. Smith's land, north by lands of Francois Bird, containing twelve hundred acres, at ($3) three dollars per acre, amounting to $3,600.00.

Knowing nothing further and nothing else being pointed out to us, we here close this inventory and appraisement, amounting in the aggregate to the sum of (27,600.00) twenty-seven thousand six hundred dollars.

In testimony whereof we hereunto sign our names in pres-
1411 ence of the undersigned competent witnesses on the day and year first above written.

MICHEAL LEGRAS.
JOHN CLEMENTS.

Witnesses:
W. S. BRINGHURST.
ALPHONSE BAILLIS.

C. V. LEDOUX,
Notary Public.

Parish court, parish of Rapides.
Filed 20th September, 1870.

C. V. LEDOUX,
Dep'y Clerk.

Certificate.

STATE OF LOUISIANA, }
Parish of Rapides. }

CLERK'S OFFICE.

I hereby certify that the above and foregoing is a true and correct copy of the inventory and appraisement on file and of record

in suit No. 1171, entitled Succession of Stephen Duncan Linton, on file in this office.

In testimony whereof witness my signature and seal of office this 6th Nov., 1877.

C. L. RANSDELL,
Dep'y Clerk.

1412 *Deposition of E. T. Merrick.*

Parish Court, Parish of Rapides.

In the Matter of the Succession of S. D. LINTON. No. 248.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Personally came and appeared before me, the undersigned authority, J. Paris Childress, first justice of the peace in and for the parish of Orleans, State of Louisiana, EDWIN T. MERRICK, witness named in the annexed commission, who, being by me first duly sworn, doth depose and make answer to the following interrogatories, to wit:

Inter-og. No. 1. I am an attorney and counseller at law and solicitor in chancery. I have practised law, including the time I was on the bench, over forty years, and in the State of Louisiana since the spring of 1839.

Inter-og. No. 2. I have said record in my hands and with which I am very familiar. The services rendered in that case in behalf of J. Madison Wells, Jr., which were mentioned in the account
1413 rendered, were fully worth the sum of ($300.00) three hundred dollars charged. The suit is one in chancery, in which branch of the law, owning to the increased amount of the labor, I have always understood that it was right to charge somewhat higher fees than in ordinary suits in law. In a case of this kind I would think that a mere retainer fees of not less than $250.00 (two hundred and fifty dollars) would be reasonable, but in this case, besides the preparations of the plea as to the jurisdiction of the court, which covers seven pages of record paper, interrogatories were prepared to take the testimony of witnesses. The fee of three hundred dollars would not be unreasonable for the services in the circuit court of the United States, on the law side of the court, in a case involving so large an amount. The suit is still pending, and I am still attending the same on behalf of dative testamentary executor, for which some further compensation will be due my firm.

This answer is in reply to the matters inquired into in the second inter-ogatory and refers to the suit therein mentioned and the
1414 fee charged in favor of Merrick, Race and Foster.

Inter-ogatory No. 3. In my opinion the fee is a very moderate one.

Inter-ogatory No. 4. Witness is informed that the record No. 5621

of the supreme court cannot be found. Witness is therefore unable to state what would be the value of legal services of R. J. Bowman in defending that suit.

Inter-ogatory No. 5. Witness cannot say whether seven hundred and fifty dollars would be a reasonable fee for the reason stated in answer to Intr. No. 4.

Inter-ogatory No. 6. I have the transcript in suit of O. K. Hawley, public administrator, *vs.* Abraham Hyman *et als.*, No. 6186 of the supreme court, before me. I should think that fifteen hundred dollars would not be an unreasonable fee for bringing and prosecuting the suit in the district and supreme courts. The nature of the suit would necessitate much labor.

1415 Inter-ogatory No. 7. I have already answered this inter-ogatory in answer to inter-ogatory No. 6. I should think fifteen hundred dollars a reasonable fee.

Inte'y No. 8. So far as I know, lawyers would feel themselves justified in charging higher fees in cases where payment depended on their exertions than in other cases. Reward for labor in such cases dependends on a contingency. The case is quite different from that of a responsible client who would be able to pay whether the exertions were successful or not.

Interg. No. 9. It is frequently the case, I think, that attorneys change a general retainer for tending to business in successions. This general retainer does not, as I understand it, preclude the attorney from charging for special cases, such as bringing or defending suits. Such services, I should say, would entitle the attorney to fee in addition to the general retainer.

1416 Inter-ogatory No. 10. I do not think of anything more to answer.

Cross-Inter-ogatories—Answers.

Inter-ogatory No. 1. It is very often the case that attorneys reduce fees when their exertions have produced but small results, but legally I understand that an attorney has the right to charge for his services whether the results have been advantageous in bringing into the succession large sums or otherwise. I look upon the time of an attorney expended in labor as valuable, and if it has taken a large amount of labor to recover for a succession a sum of money I do not see why the attorney should not be paid as well as in other cases.

Inter-ogatory No. 2. As I do not admit that an attorney's fee should be regular in all cases by the amount for which the property of the succession is sold, I cannot answer this inter-ogatory now fully.

Inter-ogatory No. 3. I have no sufficient data to answer
1417 this inter-ogatory further than I have given in my answer to the inter-ogatories-in-chief. The attorney for the estate should be paid for the services rendered and any additional allowances should be paid—should be paid additional fees for services rendered in courts in which the attorney of the estate did not practice.

E. T. MERRICK.

Sworn and subscribed before me this 7th day of January, 1878.

J. PARIS CHILDRESS,

[L. S.] *First Justice of the Peace, Parish of Orleans.*

Deposition of George W. Race.

GEORGE W. RACE, witness named in the annexed commissions, being present, and after first being duly sworn by me, doth depose and make answer to the following inter-ogatories, to wit:

Inter-ogatory 1st. No. 1. I am and have been a practising attorney and counsellor-at-law at this bar for over thirty years, except during the years of the late civil war.

1418 Inter-ogatory No. 2. After examining the record No. 7672 in the United States circuit court, *and* say that a fee of three hundred dollars is reasonable for the attorney in defending the representative of the succession of S. D. Linton.

Inter-ogatory No. 3. Yes.

Inter-ogatory No. 4. Not being able to see the record of the supreme court, No. 5126, I am unable to form an opinion as to the value of the services rendered.

Inter-ogatory No. 5. For reasons assigned in answer No. 4 I am unable to answer this one.

Inter-ogatory No. 6. After examining the transcript in suit No. 6186 of the supreme court, entitled Hawley, public administrator, *vs.* Hyman *et als.*, say that a fee of fifteen hundred dollars is a reasonable one for bringing and prosecuting said suit in the district and supreme court and executing the judgement.

1419 Inter-ogatory No. 7. Yes.

Inter-ogatory No. 8. Yes.

Inter-ogatory No. 9. Yes.

Inter-ogatory No. 10. I do not.

Cross-examined:

No. 1. In settling succession general-y the attorney's fee bears some proportion to the amount and value of the property of the succession; but there are cases when the attorney's fee should be out of all proportion as to the value of the succession, depending entirely on the nature and amount of the services rendered by the attorney.

X Inter-ogatory No. 2. Being governed by the principles announced in answer to cross-inter-ogato*ries* No. 1, I have not sufficient information to assess a fee in the case stated. Circumstances might make it worth from five hundred to several thousand dollars.

1420 Inter-ogatory No. 3. The attorney for the succession should be paid a fee of not less than five hundred dollars for his general services therein and an additional fee in every litigated suit growing out of said succession, and in addition to these any other att'ys employed by him or by the administrator to assist with settlement of the succession or in conducting of the suits should be

paid by the succession a reasonable fee for the services rendered to the succession.

G. W. RACE.

Sworn and subscribed before me this 7th day of January, 1878.

J. PARIS CHILDRESS,

[L. S.] *First Justice of the Peace.*

Deposition and Answer of Edward W. Huntington.

EDWARD W. HUNTINGTON, witness named in the annexed commission, being present, and after being by me first duly sworn, doth depose and make answer to the following inter-ogatories, to wit:

1421 Inter-ogatory No. 1. Yes; since 1853.

Inter-ogatory No. 2. I have examined the record in suit No. 7672, and consider the fee of three hundred dollars a mere charge for the services rendered as referred to in this inter-ogatory.

Inter-ogatory No. 3. Yes.

Inter-ogatory No. 4. Not having the record No. 5621 of the supreme court, I am therefore unable to answer this inter-ogatory.

Inter-ogatory No. 5. For reasons assigned in answer to inter-ogatory No. 5 I cannot answer to this.

Inter-ogatory No. 6. I am of the opinion that fifteen hundred dollars would be a reasonable fee for the services mentioned in this inter-ogatory.

Inter-ogatory No. 7. Yes.

Inter-ogatory No. 8. Yes.

Inter-ogatory No. 9. I think he is.

1422 Inter-ogatory No. 10. No.

Cross-Inter-ogatories.

Inter-ogatory No. 1. The att'y's fees in such a case are not solely governed as to the amount charged by the value and amount of the property belonging to the estate.

Inter-ogatory No. 2. I cannot answer this inter-ogatory, as I am of the opinion above stated, that the fees of an attorney for a succession are not solely governed as to the amount charged by the value of the estate.

Inter'g. No. 3. I have already stated that I considered fifteen hundred dollars a reasonable fee for said services. I think that if the other attorneys are employed by the administration or by the attorney of the estate, with the knowledge and consent of the administrator, they should be paid for their services according to the value of their services.

E. W. HUNTINGTON.

Sworn and subscribed to before me this 7th day of January, 1878.

1423 J. PARIS CHILDRESS,

First Justice of the Peace, Parish of Orleans.

Depositions and Answers of John Finney.

JOHN FINNEY, being witness named in the annexed commission, being present, and after — by me first duly sworn, doth depose and make answer to the following inter-ogatories, to wit:

Inter'g. No. 1. I am a practicing att'y and am councellor-at-law. I was admitted to the bar of La. in 1842, and have been practicing ever since, with the exception of about three years during the late war, when I was absent from the State.

Inter-og. No. 2. I understand this question to relate to the fee of the solicitor of the succession of S. D. Linton, who was made a party defendant in that suit. I think the sum of two hundred and fifty dollars (250.00) a very moderate retainer. I would not enter an appearance for the representative of the succesion of Linton
1424 for less than two hundred and fifty dollars. I think that five hundred dollars would be a moderate fee for conducting and managing the case until finally determined.

Inter-og. No. 3. I think so.

Inter'g. No. 4. I have not be- able to see the record No. 5621 of the supreme court and have been informed that said record could not be found.

Inter'g. No. 5. I refer to my answer to inter'g. No. 4, and hence cannot form an opinion.

Inter'g. No. 6. I am unable to say, but I do not think fifteen hundred dollars an u-reasona-l- fee.

Inter-og. No. 7. I understand the litigation was successful, and in that case I think fifteen hundred dollars little enough, and in that case espec-ally.

Inter-og. No. 8. When the fee is contingent and to be paid out of what may be realized I think the usual — of the bar is to
1425 charge higher fees than when the fees is certain. I generally charge double the usual fee contingent cases.

Inter-og. No. 9. I think an attorney is entitled to charge an additional fee in all suits outside of the regular administration of the estate in addition to the fee for conducting the mortuary proceedings.

Inter-og. No. 10. I do not.

Cross-examined:

Inter-og. No. 1. I think the fee should be regulated by the amount involved and the labor combined.

Inter-og. No. 2. That would depend upon the amount of the labor and by circumstances. I can easily conceive of a succession which at its opening might embrace very large values and in the course of a long and tedious litigation and after several — and troublesome suits and labor-ous professional services these values might be greatly reduced. In such a case I do not think an attorney'- fees
1426 should be regulated entirely by the ultimate results. In the above estimate of fees I have taken into consideration that

during the litigation the value of the assets of the succession was greatly reduced, and I will further state that no matter what the result may be I think an attorney is entitled to an amount of a reasonable retainer if there be enough left to pay it.

Inter-g. No. 3. I am unable to say. The amount might be realized with very little labor or litigation, or after much litigation and several suits the fee would vary according to the amount of labor of litigation. I think an attorney is entitled to a fee for conducting the mortuary proceedings, and if he or any other attorney is employed in any other suits outside of the succession their services should be paid for separately. I am not very well acquainted with the litigation referred to in the inter-ogatory-in-chief. Both have given minimum estimates, to the best of my knowledge. I would not be willing to undertake the litigation in question for less.

JOHN FINNEY.

1427 Sworn and subscribed to before me this 7th day of January, 1878.

J. PARIS CHILDRESS,

[L. S.] *First Justice of the Peace, Parish of Orleans.*

Certificate of J. Paris Childress, First Justice of the Peace, Parish of Orleans, State of Louisiana.

PARISH OF ORLEANS, }
City of New Orleans. }

I, J. Paris Childress, first justice of the peace for the parish of Orleans, duly elected, sworn, commissioned, and acting as such, in and for the city of New Orleans and State of Louisiana, do hereby certify and make known that the foregoing deposition- of E. T. Merrick, George W. Race, E. W. Huntington, and John Finney, witnesses, *was* taken before me on the seventh day of January, A. D. eighteen hundred and seventy-eight, at the *trial* and place in the caption hereof mentioned; that the examinations, responses, and statements of each of said deponents were reduced to writing by my clerk, George P. Childress, and by the said deponents respect-
1427½ ively sworn to and subscribed in my presence at the time and place aforesaid.

In testimony whereof I, J. Parish Childress, first justice of the peace for the parish aforesaid, do hereunto set my hand, at the city of New Orleans, in the State of Louisiana, this 7th day of January, A. D. eighteen hundred and seventy-eight.

J. PARIS CHILDRESS,

[SEAL.] *First Justice of the Peace for the Parish of Orleans.*

Costs: Commission fees, twenty — ($20.00).

J. PARISH CHILDRESS,

[SEAL.] *First Justice of the Peace for Parish of Orleans.*

Sale of Property, Chas. L. C. Dupuy to Charles L. Robinson, 22d March, 1877.

Be it known that on this twenty-second day of the month of March, in the year of our Lord one thousand eight hundred and seventy-seven, before me, Theodore Guyol, a notary public, duly commissioned & sworn, for the parish of Orleans, State of Louisi-
1428 ana, & in presence of the witnesses hereinafter named and undersigned, personally appeared Charles Louis Cooper Dupuy, of this city, who declared that for the consideration & on the terms and considerations hereafter set forth he does by these presents grant, bargain, assign, convey, transfer, & deliver unto Charles L. Robinson, of the parish of Rapides, in this State, present, purchasing, & acknowledging due delivery and possession thereof, a certain tract of land or plantation called the Quantico plantation, situate, lying, & being in the said parish of Rapides & on the east side of Bayou Boeuf, about eleven miles from Alexandria, at the mouth of Bayou Robert, bounded on the upper side by the land of Chambers, on the lower side by the Esperanza plantation, & containing eighteen hundred acres, more or less, together with all the buildings and improvements thereon & all the rights, ways, & appurtenances thereunto belonging, being the same property which was purchased by the present vendor at a cash sale of the property of the estate of Stephen D. Linton made by the sheriff of the parish of Rap-
1429 ides on the seventeenth day of the present month in virtue of an order of sale to him directed by the parish court of the said parish in the matter of the succession of the said Stephen D. Linton, No. 248 on the docket of said court.

And the said property was sold and adjudicated in lots, according to a plan annexed to the deed of sale thereof, executed by said sheriff in favor of said Dupuy, recorded in the office of the clerk of said court on the seventeenth day of the present month in Sheriff's Deed Book "A," folios 327, 328, 329, & 330, & in the office of the recorder of said parish in Conveyance Book " E," folios 15, 16, & 17; to have and to hold the said property unto the said purchaser, his heirs & assigns forever; and the said vendor does hereby cede and transfer unto the said purchaser all the rights and actions of warrantee which he is or may be entitled against all the former owners and proprietors of the said property, subrogating the said purchaser to the said rights & actions to be by him enjoined & exercised to the fullest extent by virtue hereof, it being, however, well agreed
1430 and understood by and between the parties hereto that the present sale is made without any warranty whatsoever on the part of said vendor except against his own personal acts & deeds, & that in case of eviction by or through any other cause he shall not be liable to a restitution of the price hereinafter stipulated & expressed nor to the payment of any damages that may result to the said purchaser, his heirs or assigns, from such eviction, he, the said purchaser, simply taking the place of the said vendor in relation to said property as though he had purchased the same at said

sheriff's sale. This sale is made and accepted for and in consideration of the price & sum of twelve thousand dollars & interest, in deduction of which the said purchaser has paid the sum of four thousand two hundred and fifty dollars in ready money to the said vendor, & for the balance he has given & furnished his six several promissory notes, drawn to the order of and indorsed by himself, dated this day, bearing interest at the rate of eight per cent. per annum from their date until paid, & made payable at the State National Bank, in this city, as follows:
1431 Five for the sums of fifteen hundred dollars each, and payable, one in one year, two in two years, & two in three years, & three others for the sum of two hundred & fifty dollars *is* payable in one year; all of which notes, after being countersigned & paraphed by the notary to identify with this act, were delivered to the said vendor, who acknowledged the receipt thereof, as well as of the said ready money; and in case it shall become necessary to institute legal proceedings for the recovery of the amount of said notes or any part thereof the said purchaser binds himself to pay the fees of the attorney-at-law who may be employed for that purpose, which fees are hereby fixed at five per cent. on the amount sued for. Now, in order to secure the full & punctual payment of said notes, together with all the interest & attorney's fees as aforesaid, the said property is & remains hereby specially mortgaged & hypothecated in favor of said vendor & other future holder or holders of the said notes until the full & final payment thereof, he, the said purchaser, promising & binding himself not to sell, alternate, or in-
1432 cumber the said property to the prejudice & detriment of said mortgage & vendor's lien thereon. It is well agreed & understood by & between the said parties that all taxes on the said property for the present year & ensuing years shall be punctually paid by said vendor until all the notes above described shall have been paid and redeemed. The said parties hereby dispence with the production of a certificate from the recorder of mortgages in and for the said parish of Rapides, showing the mortgages, if any, existing on said property, & to be annexed to this act as required by law, fully exonerating the undersigned notary from any liability in the premises with regard thereto; and now to these presents ccome & intervened Mrs. Marie Perkins, widow by first marriage of Stephen D. Linton, and now the wife by second marriage of William R. Evans, at present residing in this city, & by whom she is herein duly & especially assisted & authorized, who, after having read & taken full cognizance of what is above written, declared that in her capacities of widow in community & universal legatee of he- said late first husband, the said S. D. Linton, she does hereby
1433 approve & to all intents confirm & ratify as well the sale & conveyance herein made by the said Dupuy to the said Robinson of the property above described as the sale & adjudication thereof, made by the sheriff of the parish of Rapides to said Dupuy on the seventeenth day of the present month, in the matter of the succession of the said Stephen D. Linton, hereby wishing and intending that the said two sales shall have their full force & effect, & shall — all

respects be as valid as though she had been a party to & had signed the same as vendor, &, moreover, renouncing for herself & her heirs in favor of the present owner of said property any and all rights which she may now have or ever had therein, whether as widow in community & universal legatee of the said Stephen D. Linton or otherwise. To this act also came & intervened Samuel H. Kennedy, president of the State National Bank of New Orleans, herein acting
in his capacity as such by virtue of a resolution of the board of
1434 directors thereof passed at their sitting of the twenty-first day
of the present month, a duly certified copy of which is herein annexed, who, after taking cognizance of the foregoing, declared that, in the name of the said bank and by virtue of the powers in his vested in & by the said resolution, he does hereby approve, confirm, & ratify as well the sale herein made by the said Dupuy to the said Robinson as the sale made by the sheriff of the parish of Rapides to him, the said Dupuy, & above referred to, and, moreover, renouncing in the name of the said bank all and whatever rights the said bank may have against the said property, whether as mortgagee or otherwise; and it is further agreed that in case of an exchange being made by the said Robinson with Josiah Chambers of a portion of the lands above described to be taken on the extreme north side & not to exceed seventy-five acres the said Dupuy shall release said portion of the ground from the mortgage herein granted and reserved, taking a mortgage on the land received in exchange by him, the said Charles L. Robinson.

1435 Done & passed in my office, at the city of New Orleans, on the day, month, & year first before written, in the presence of Ambrose G. La Pice and John Steine, competent witnesses, who have signed these presents with the parties & me, notary, after reading the whole.

MAURICE P. EVANS.
WILLIAM R. EVANS.
SAMUEL H. KENNEDY.
CHARLES L. DUPUY.
CHARLES L. ROBINSON.
A. G. LA PICE.
JOHN STEIMER.
THEODORE GUYOL,
Notary Public.

A true copy from the original.

Resolutions.

At a meeting of the board of directors of the State National Bank of New Orleans, held the twenty-first day of March, 1877, the following preamble & resolutions were adopted:

Whereas at the probate or succession sale of Stephen D. Linton, deceased, the Quantico plantation, in the parish of Rapides, was sold at public sale by the sheriff at the door of the court-house, in Alexandria, La., on the 17th day of March, 1877, under an

1436 order of court, and Charles L. C. Dupuy became the purchaser thereof; & whereas Charles L. C. Dupuy is about to sell the said plantation to Charles L. Robinson, of the parish of Rapides:

Resolved, That *that* the president, Sam'l H. Kennedy, be & *be* hereby authorized & requested to intervene on behalf of this bank in the act of sale from the said Dupuy to the said Robinson for the purpose of satisfying & confirming the said sale to Dupuy & the sale from said Dupuy to the said Robinson in so far as this bank may be interested & concerned, & to warrant the tittle to said Robinson against the acts and deeds of this bank and no further.

A true copy from the minutes.

In testimony whereof I have hereunto set my hand & the seal of the State National Bank of New Orleans, at New Orleans, this twenty-first day of March, 1877.

J. E. GARREAU,
Ass't Cashier.

1437 No. 1168.

Petition of Plaintiff.

To the hon. the parish judge of the parish of Rapides:

The petition of J. M. Wells, Jr., in his capacity of dative testamentary executor of the succession of S. D. Linton, dec'd, respectfully represents that Mary Linton, wife of W. R. Evans, claiming to be universal legatee of the said S. D. Linton in virtue of a will probated on or about 25th of March, 1875, on or about 15 of July, 1875, obtained an *ex parte* order from your hon. court, ordering her to be put in possession of the property of said estate.

Petitioner alleges that said succession remained without a representative until 1871, when the public administrator was appointed administrator and from that time until the present; that said succession is largely in debt, if not utterly insolvent. The administration is unfinished, and a continuance of the administration — absolutely necessary to protect interests of the custodian, and their interests cannot be disposed of by an *ex parte* order, ordering the said
1438 legatee to be put in possession of said estate. Petitioner represents that said order issued illegally & is null & void for the following reasons, viz:

1st. Because a decree ordering the universal legatee to be put in possession of the effects of the succession can only be legally rendered when done contradictorily with the executor or administrator representing the said succession as aforesaid — is virtually a judgment rendered without citation & is an absolute nullity.

2nd. Because neither the legal or testamentary heir has any legal right to any portion of the succession under administration until the debts of the succession are paid & a final settlement, & then only for the residue, & until then has no right to interfere with said succession.

Petitioner further represents that the said Mary Linton is now the wife of William R. Evans, and, with him, a resident of the city of

Philadelphia, and it is necessary that a *curator ad hoc* be appointed to represent said absent defendant.

Wherefore petitioners pray- that R. A. Hunter be appointed *curator ad hoc* to represent said absent defendant; that she be au-
1439 thorized to stand in judgment, & that she be duly cited to answer this petition, & after due proceedings that said *ex parte* order, ordering the said Mary Evans to be put in possession of the property of said succession, be declared null & void; and for costs & general relief.

R. J. BOWMAN,
Att'y for Plai-tiff.

Order.

The foregoing petition being considered, it is therefore ordered that R. A. Hunter be appointed *curator ad hoc* to represent Mary Evans, the absentee; & it is further ordered she be authorized to stand in judgment.

May 8th, 1876.

J. OSBORN,
Dist. Judge.

Affidavit.

Before me, the undersigned authority, personally appeared R. J. Bowman, att'y for pl'ff, who, being duly sworn, says that the parish judge is recused and also absent from the parish, according to the best of his knowledge and belief.

1440 R. J. BOWMAN.

Sworn to & subscribed before me this 8th May, 1876.

J. OSBORN,
District Judge.

I accept the appointment of *curator ad hoc.*
May 8, 1876.

R. A. HUNTER.

Filed May 8th, 1876.

CHAS. MOONE, JR.,
Dep'y Clerk.

Citation.

STATE OF LOUISIANA, }
Parish of Rapides. }

Parish Court.

J. M. WELLS, Jr., Executor, }
vs. } No. 1168.
MARY EVANS. }

To Mrs. Mary Evans, of the parish of Rapides:

You are hereby cited to appear in the office of the clerk of said court, in the town of Alexandria, in the parish aforesaid, and comply

with the demand contained in the petition as above, of which a copy accompanies the citation, or deliver your answer thereto, in writing, in ten days after the service hereof, with an additional day
1441 for every ten miles from your residence and the office of said clerk.

Witness the Honorable H. L. Daigre, judge of said court, this 16th day of May, A. D. 1876.

CHAS. MOORE, JR.,
Deputy Clerk.

Sheriff's Endorsement.

The above citation, with a certified copy thereof and of petition, were received by the sheriff — the parish of Rapides the 16 day of May, A. D. 1876.

J. M. BARRETT,
Deputy Sheriff.

Sheriff's Return.

On the 16th day of May, A. D. 1876, I made service of the copies of pitition and citation above mentioned by delivering them to Mrs. Mary Evans in person.

J. M. BARRETT,
Deputy Sheriff.

1442 *Citation.*

STATE OF LOUISIANA, }
Parish of Rapides. }

Parish Court.

J. M. WELLS, Jr., Executor, }
vs. } No. 1168.
MARY EVANS. }

To Mary Evans, R. A. Hunter, *curator ad hoc* of the parish of Rapides:

You are hereby cited to appear in the office of clerk of said court in the town of Alexandria, in the parish aforesaid, and comply with the demand contained in the petition as above, of which a copy accompanies the citation, or deliver your answer thereto in writing in ten days after the service hereof, with one additional day for every 10 miles from your residence and the office of said clerk.

Witness the Honorable H. L. Daigre, judge of said court, this 11th day of May, 1876.

CHAS. MOORE, JR.,
Deputy Clerk.

Sheriff's Endorsement.

The above citation, with a certified copy thereof and of petition, were received by the sheriff of the parish of Rapides the 11th day of May, A. D. 1876.

D. C. PAUL, *Sheriff.*

1443 *Sheriff's Return.*

On the 11th day of May, A. D. 1876, I made service of the copies of petition and citation above mentioned by delivering them to R. A. Hunter, *curator ad hoc*, in person.

D. L. PAUL, *Sheriff.*

Parish court, parish of Rapides.
Returned and filed May 11th, 1876.

CHAS. MOORE, JR., *D'y Clerk.*

Amended and Supplemental Petition.

Parish Court.

J. M. WELLS, Jr., Ex.,
vs.
M. P. EVANS *et al.* } No. 1168.

In this case the pl'ff, with leave of the court, represents that the husband of Mary P. Evans is temporarily in the parish of Rapides.

Wherefore plaintiff prays that William R. Evans, the said husband, be made a party to this suit, and if he leaves said parish prior to service hereof plaintiff prays that a *curator ad hoc* be appointed to represent said absent-, and that service be made upon said curator, & that said Mary P. Evans be authorized to stand in judgment.

R. J. BOWMAN,
Att'y for Pla-ntiff.

1444 *Order.*

The foregoing petition being considered, it is therefore ordered that W. C. McGuinsey be appointed *curator ad hoc*, as prayed for.

This done & signed in open court on this 21 June, 1876.

——— ———,
Parish Judge.

Filed June 21st, 1876.

CHAS. MOORE, JR.,
Dep'y Clerk.

Citation.

STATE OF LOUISIANA,
Parish of Rapides.

Parish Court.

J. M. WELLS, Jr., Ex'tor,
vs.
Mrs. MARIE EVANS. } No. 1168.

To Mrs. Marie Evans, of the parish of Rapides:

You are hereby cited to appear in the office of the clerk of said court, in the town of Alexandria, in the parish aforesaid, and comply with the demand contained in the petition as above, of which a copy accompanies the citation, or deliver your answer thereto in writing in ten days after service hereof, with one additional day for every 10 miles from your residence and the office of said clerk.

1445 Witness the Honorable H. L. Daigre, judge of said court, this 20 day of June, A. D. 1876.

CHAS. MOORE, JR.,
Dep'y Clerk.

Sheriff's Endor-ement.

The above citation with a certified copy thereof and of petition were received by the sheriff of the parish of Rapides the 20th day of June, A. D. 1876.

D. C. PAUL, *Sheriff.*

Sheriff'- Return.

On the 20th day of June, A. D. 1876, I made service of the copies of petition and citation and injunction above mentioned by delivering them to Mrs. Mary P. Evans in person.

D. C. PAUL, *Sheriff.*

Parish court, parish of Rapides.
Returned and filed June 21st, 1876.

CHAS. MOORE, *D'y Cl'k.*

Motion to Stand in Judgment.

J. M. WELLS, Jr., Executor,
vs.
M. P. EVANS. } No. 1168.

In this case the plaintiff comes & move- in open court that the defendant be authorized to stand in judgment in accordance with the prayer of the petition.

R. J. BOWMAN,
Att'y for Pl'ff.

1446 Filed June 23rd, 1876.

CHAS. MOORE, Jr.,
Dep'y Clerk.

Motion to Dismiss.

Parish Court, Rapides Parish.

J. M. Wells, Dative Testamentary Exec-tor,
vs.
Mary P. Evans. } 1168.

Now comes the defendant and moves to dismiss the above-entitled suit on the ground that defendant is a married woman, and that no petition or citation has been served upon her, as the law requires; that her husband be served and cited, and that she cannot be brought into court unless the same was done.

Prays that the same *de* dismissed with cost.

W. F. BLACKMAN, *Attorney.*

Filed June 23d, 1876.

CHAS. MOORE, Jr.,
Dep'y Clerk.

Petition to Remove to U. S. Circuit Court.

In the Parish Court, Parish of Rapides, State of Louisiana.

J. M. Wells, Jr., Executor,
vs.
Mary Evans. } No. 1168.

1447 To the honorable the judge of the parish of *the parish of* Rapides:

The petition of Mrs. Marie P. Evans, who is sued herein as Mrs. Mary Linton, wife of Wm. R. Evans, and of William R. Evans, her husband, who joins his said wife herein for the purpose of authorizing her herein, respectfully shows:

1st. That petitioner, Mrs. Marie P. Evans, is a citizen of the State of Pennsylvania, residing at Philadelphia, in said State, with her said husband, and that the plaintiff in the above entitled and numbered cause is a citizen of the State of Louisiana, residing in the parish of Rapides, in said State, and that each were citizens of said respective States at the date of the institution of said cause.

2nd. That said plaintiff, J. M. Wells, Jr., styling himself dative testamentary executor of Stephen D. Linton, has instituted his said suit in this honorable — praying to have set aside and annulled a certain judgment rendered by this honorable court on the 13th day of July, 1873, which proponent decreed your petitioner, Mrs. Marie P. Evans, to be the universal legatee of the said late Stephen Duncan Linton, and further ordered that your said petitioner be
1448 put in possession of the estate of said Stephen D. Linton.

That the amount in controversy in said suit instituted by

said plaintiff as aforesaid largely exceeds the sum of five hundred dollars, and she now claims a removal of the above entitled and numbered cause in the circuit court of the United States for the fifth circuit and district of Louisiana, returnable therein on the first day of the next session, to be holden at New Orleans on the first Monday of November, A. D. 1876, to which end she now tenders a good and sufficient bond, as required by law.

Wherefore petitioner prays that said cause may be ordered to be removed into the said United States circuit court according to law.

MARY P. EVANS.
WILLIAM R. EVANS.

CITY OF NEW ORLEANS, }
State of Louisiana. }

Mrs. Marie P. Evans, being duly sworn, says that she is defendant in this suit and both she and her husband are citizens of the State of Pennsylvania, and that J. M. Wells, Jr., is a citizen of the State of Louisiana, and they were each citizens at the time this suit commenced; that the matter in dispute in this suit exceeds
1449 one thousand dollars in value.

MARIE P. EVANS.

Subscribed and sworn to before me this 15th day of July, A. D. 1876.

WM. H. HOLMES,
Second Justice of the Peace, Parish of Orleans.

Order.

Ordered that the prayer of the foregoing petition be granted and the suit removed to the United States circuit court for the fifth circuit & district of Louisiana upon petitioners giving bond in the sum of five hundred dollars.

Filed August 22nd, 1876.

C. L. RANSDELL, *D'y Clerk.*

Bond.

Know all men by these presents that we, Mrs. Marie P. Evans, wife of William R. Evans, herein authorized by her said husband, of Philadelphia, State of Pennsylvania, as principal, and J. S. Bouchard, of New Orleans, in the State of Louisiana, as surety, are held and firmly bound unto J. M. Wells, Jr., styling himself dative
1450 testamentary executor of the succession of S. D. Linton, of the parish of Rapides, State of Louisiana, in the sum of five hundred dollars, lawful money of the United States of America; for the payment of which we do by these presents firmly bind ourselves, our heirs, executors, and administrators, unto the said J. M. Wells, Jr., styling himself executor as aforesaid, his successors and legal representatives.

Dated at New Orleans, La., this 15th day of July, 1876.

The consideration of this bond is such that whereas the said Mrs. Marie P. Evans, wife of William R. Evans, has filed her petition in the parish court of the parish of Rapides, praying for the removal of a certain suit therein depending, where*as* the said J. M. Wells, Jr., styling himself executor as aforesaid, is plaintiff and the said Mrs. Marie P. Evans is defendant, No. 1168 on the docket of said court, unto the circuit court of the United States for the fifth circuit and district of Louisiana:

Now, therefore, if the said Mrs. Marie P. Evans shall enter in said United States circuit court on the first day of its next session, to be holden at New Orleans, in said district, a copy of the record
1451 in said suit and pay all costs that may be awarded by said circuit court if it shall hold that said suit was wrongfully or improperly removed thereto, then this obligation shall be null and of no further force or effect.

MARIE P. EVANS.
P. S. BOUCHARD.

I hereby authorize my wife, Marie P. Evans, to sign the above obligation.

WILLIAM R. EVANS.

Filed August 22nd, 1876.

C. L. RANSDELL, *D'y Clerk.*

Judgment.

Parish Court.

J. M. WELLS, Jr., Adm'r,
vs.
MARY EVANS. } No. 1168.

The default in this case having been rendered for more than two clear days, & the defendant failing to answer, and the law and the evidence being in favor of the plaintiff's demand, it is therefore ordered, adjudged, and decreed that the judgement rendered on
1452 about the 25th July, 1875, ordering her to be put in possession of the property of S. D. Linton, be annulled and avoided.

It is further ordered that defendant pay costs of suit.

Thus done on the 23d of October, 1876, & signed on the 19th December, 1876, *nunc pro tunc.*

H. L. DAIGRE,
Parish Judge.

Filed Dec. 19th, 1876.

C. L. RANSDELL, *D'y Clerk.*

Appeal Bond.

Know all men by these presents that we, Marie P. Evans, as principal, and M. Ryan, as security, are held and firmly bound unto

James H. Ramsdell, clerk of the district court for Rapides parish, and his successors in office in the sum of fifty (50.00) dollars; for the payment whereof we bind ourselves, our heirs, administrators, and executors, firmly by these presents.

Dated at Alexandria, La., on this 9th day of January, A. D. 1877.

1453 Whereas the above-bounden Marie P. Evans has taken a devolutive appeal from a final judgment rendered against her in the suit of J. M. Wells, Jr., executor, *vs.* Marie P. Evans, in the parish court in and for the parish of Rapides, Louisiana, on the 19th day of December, A. D. 1877, and No. 1168:

Now, the condition of the above obligation is such that the above-bound Marie P. Evans shall prosecute her appeal and shall satisfy whatever judgment for costs may be rendered against her, or that the same shall be satisfied by the proceeds of the sale of their estate, real or personal, if she be cast in the appeal; otherwise that said M. Ryan, security, shall be liable in her place.

MARIE P. EVANS,
Per M. RYAN, *Att'y.*
M. RYAN, *Security.*

Filed January 9th, 1877.

JAS. H. RANSDELL, *Clerk.*

1454 *Motion to Reinstate Cause.*

Parish Court, Parish of Rapides.

J. M. WELLS, Ex., *vs.* M. P. EVANS. } No. 1168.

In this case the pl'ffs comes & represents that the judgment rendered in this — was rendered inadvertently and through errors, the judgment by default having been set aside before the judgment thereon was rendered.

Wherefore pl'ff prays that the said judgment be set aside and said suit be reinstated & for costs & general relief.

R. J. BOWMAN,
Att'r'y for Pl'ff.

Filed M'ch 17th, 1877.

JAS. H. RANSDELL, *Cl'k.*

1455 *Petition of Plaintiff.*

To the honorable the parish judge of the parish of Rapides:

The petition of J. M. Wells, Jr., in his capacity of dative testamentary executor of the succession of S. D. Linton, respectfully represents that Marie P. Evans and her husband, William R. Evans, now residents, but the said Marie P. Evans being temporarily in said parish, recently, viz., on the 16th of May, 1875, filed a petition

in your hon. court representing the said Marie P. Evans as universal legatee of the said Linton under a pretended *ex parte* judgment rendered about July, 1875, praying that a writ of possession issue commanding the sh'ff to put her in quiet possession of the Quantico plantation belonging to the said succession, and that petitioner be duly cited to answer said petition that the hon. court, on the filing of said petition, viz., 16th May, 1876, & before citation issued, rendered judgment in favor of Marie P. Evans & her husband, ordering that a writ of possession issue commanding
1456 the sheriff to place Mrs. Marie P. Evans & husband in quiet possession of the Quantico plantation, as will fully appear from said petition & judgment.

Petitioner further represents that a writ of possession issue forthwith upon said *ex parte* judgments, and the sheriff, D. C. Paul, or his deputy, is about to execute said writ under said pretended judgment, and will proceed to do so unless prohibited by an order of this court.

Petitioner represents that the said judgment rendered on 16th May, 1876, & the judgment rendered in the — of —, 1875, also ordering a writ of possession to issue, & recognizing the said Marie P. Evans as universal legatee, are absolute nullities, because rendered without citation & upon *ex parte* proceedings; that the said writ of possession issued illegally, not only because the said judgments are nullities, but because it issued without notice of judgment and within the ten days' delay to which a defendant is entitled under every execution.

Petitioner further represents that, notwithstanding the said judgment, rendered in 1875, was an absolute nullity, petitioner
1457 brought suit to have the same set aside, and the said Mary P. Evans was well aware of said suit when she obtained the subsequent iliegal *ex parte* judgment.

Petitioner further alleges that the sheriff is about to illegally execute said writ of possession without even serving the three days' notice required by article 632, C. P., & petitioner fears that he may persist in executing said execution without *without* giving the said three days' delay.

Petitioner further represents that the said succession is under administration and entirely unsettled; that the Quantico plantation is the only property belonging to said succession and it has only recently — recovered after nearly five years' litigation; that during said litigation a very large amount of expences have been in*creased*, amounting to about five thousand dollars, and there are also other parties claiming to be creditors of said Linton to an amount over one hundred thousand dollars.

That said Marie P. Evans, ever if she were recognized as universal legatee by a valid judgment, her interest is only resid-
1458 uary, and she has no right to interfere with said succession until a full and final administration, and especially after sleeping upon her pretended rights for more than ten years and six years after an administration was opened.

Petitioner further represents that even if the universal legatee

ever had the right to end the administration and take possession of the property, he can do so only by furnishing the administrator or executor with sufficient funds to pay the expences incur-ed on the administration or executorship and giving security for the payment of the debts of the deceased.

Wherefore petitioner prays that an injunction *an injunction* issue from your hon. court enjoining the sheriff and the said Marie P. Evans and her husband, W. R. Evans, from executing or attempting to execute the said *ex partee* judgments and said pretended writ of possession until further ordered by your honl. court.

That the said sh'ff and the said Marie P. Evans and her said husband be duly cited to answer this petition; that R. A. Hunter,
1459 *curator ad hoc*, — to represent said non-residents, and after due proceedings the said *ex partee* judgment rendered 16 May, 1875, be declared an absolute nullity, and that said inju-ction be perpectuated, and for costs and general relief.

R. J. BOWMAN,
Att'y for Plaintiff.

Affidavit.

Before me, the undersigned authority, personally appeared J. M. Wells, Jr., who, being duly sworn, says the allegations of the foregoing petition are true.

J. M. WELLS, JR., *Executor.*

Sworn to & subscribed before me this 17th May, 1876.

H. L. DAIGRE,
Parish Judge.

Order.

The foregoing petition and affidavit being considered, it is therefore ordered that an injunction issue as prayed for on plaintiff executing his bond in favor of the — on the sum of five hundred dollars.

Thus done and signed on the 17th May, 1876.

H. L. DAIGRE,
Parish Judge.

1460 Filed May 17th, 1876.

CHAS. MOORE, JR., *Dep. Clerk.*

Sheriff's Acceptance.

I hereby accept service of this petition and order of injunction. May 17, 1876.

D. L. PAUL, *Sheriff.*

Order.

The foregoing petition being considered, it is therefore ordered that R. A. Hunter be appointed *curator ad hoc* to represent the absentee-.

H. L. DAIGRE,
Parish Judge.

May 22, 1876.

Injunction Bond.

J. M. WELLS, Jr., Executor, *vs.* MARIE P. EVANS *et al.* } No. 1173. Parish Court, Parish of Rapides.

Know all men by these presents that J. M. Wells, Jr., executor, as principal and —— —— as security acknowledge ourselves to be bound to Marie P. Evans and W. R. Evans in the sum of five hundred dollars; for the payment of — we bind ourselves *in solido* firmly by these presents.

Dated at Alexandria this 17th day of May, 1876.

The condition of the — above-bounden J. M. Wells, Jr., has
1461 this day obtained a writ of injunction in the parish court of the parish of Rapides against Marie P. Evans and sh'ff in the suit entitled J. M. Wells, Jr., ex., *vs.* Marie P. Evans *et al.* on the docket thereof and has enjoined the said defendants from disturbing his possession or executing a writ of possession:

Now, therefore, if the above-bounden J. M. Wells, Jr., executor, shall well and truly pay or cause to be paid all such damages the said Marie P. Evans *et al.* may sustain in case it shall be decided that said injunction was wrongfully obtained, then and in such — the above obligation to be null and void; otherwise to be and remain in full effect and force in law.

J. M. WELLS, JR., *Executor.*
CHAS. L. ROBINSON.
R. J. BOWMAN.

Parish court, parish of Rapides, La.
Filed this 17 day of May, 1876.

CHAS. MOORE, JR., *D'y Clerk.*

Injunction.

STATE OF LOUISIANA, *Parish of Rapides.*

Parish Court.

1462 J. M. WELLS, Jr., Public Adm'st'or, *vs.* Mrs. MARIE P. EVANS. } No. 1173.

To Mrs. Marie P. Evans & husband, of the parish of Rapides:

You are hereby commanded in the name of the State of Louisiana

and enjoined and inhibited until the further order of this court, to wit, from executing or attempting to execute the judgments rendered in your favor by the parish judge in chambers on the 16th May, 1876, and the 13th of July, 1875, ordering the sheriff to put you in quiet possession of the Quantico plantation; and you are further enjoined and inhibited from disturbing the plaintiff in his possession of said plantation.

Witness the Honorable H. L. Daigre, judge of said court, and given under my hand and seal of said court, at Alexandria, La., this 19th day of June, A. D. 1876.

CHAS. MOORE, JR., *D'y Clerk.*

Sheriff's Return.

Received the within, with copies of same, on June 19th, 1876, and made service of same by handing the copy to Mrs. Mary P. Evans in person on June 20th, A. D. 1876.

M. PAUL, JR., *D'y Sh'iff.*

1463 Ret'd & filed June 20th, 1876.

CHAS. MOORE, JR., *D'y Clerk.*

Citations and Returns Thereon.

STATE OF LOUISIANA, }
Parish of Rapides. }

Parish Court.

J. M. WELLS, Jr., Executor, }
vs. } No. 1173.
MARIE P. EVANS *et al.* }

To Marie P. Evans and husband, William R. Evans, of the parish of Rapides:

You are hereby cited to appear in the office of the clerk of said court, in the town of Alexandria, in the parish aforesaid, and comply with the demands contained in the petition as above, of — a copy accompanies the citation, or deliver your answer thereto in writing in ten days after the service hereof, with one additional day for every 10 miles from your residence and the office of said clerk.

Witness the Honorable H. L. Daigre, judge of said court, this 19th day of June, A. D. 1876.

CHAS. MOORE, JR.,
Dep'y Clerk.

The above citation, with a certified copy thereof and of petition, were received by the sheriff of the parish of Rapides the 19th day of June, A. D. 1876.

1464 D. C. PAUL, *Sheriff.*

On the 19th day of June, A. D. 1876, I made service of the copies of petition and citation and of order of injunction above mentioned by delivering them to Mrs. Mary P. Evans in person.

D. C. PAUL, *Sh'ff.*

Parish court, parish of Rapides.
Returned and filed June 20th, 1876.

CHAS. MOORE, JR., *D'y Clerk.*

STATE OF LOUISIANA,
Parish of Rapides.

Parish Court.

J. M. WELLS, Jr., Executor,
vs.
MARIE P. EVANS *et al.* } No. 1173.

To Marie P. Evans & husband; R. A. Hunter, *curator ad hoc* of the parish of Rapides:

You are hereby cited to appear in office of the clerk of said court, in the town of Alexandria, in the parish aforesaid, and comply with the demand contained in the petition as above, of which a copy accompanies the citation, or deliver your answer thereto in writing in ten days after the service thereof, with one additional day for every ten miles from your residence and the office of said clerk.

1465 Witness the Honorable H. L. Daigre, judge of said court, this 24 day of May, A. D. 1876.

CHAS. MOORE, JR., *D'y Clerk.*

The above citation, with a certified copy thereof and of petition and injunction, were received by the sheriff of the parish of Rapides the 24th day of May, A. D. 1876.

JOHN M. BARRETT,
Deputy Sheriff.

On the 24th day of May, A. D. 1876, I made service of the copies of petition and citation & injunction above mentioned by delivering them to R. A. Hunter, *curator ad hoc,* in person.

D. C. PAUL, *Sheriff.*

Parish court, parish of Rapides.
Returned and filed May 25th, 1876.

CHAS. MOORE, JR.,
Dep'y Clerk.

Rule of Defendants to Set Aside Injunction.

J. M. WELLS, Jr., Ex.,
vs.
MARIE P. EVANS. } 1173.

Defendants herein beg leave to file this rule to set aside the injunction herein for the reason that the same is in contempt of the

authority of this court as expressed in a writ of possession for
1466 the property enjoined, emanating from your hon. court, and in relation and contempt of a writ of prohibition issued from the hon. U. S. circuit court at N. O., dated June 3d, 1876, which writ is herein offered in evidence.

Def'ts therefore ask that this injunction be set aside & that an *alias* writ of possession for the property known as the Quantico plantation be issued by your hon. court, and for general relief.

McGUERNSEY, *Att'y.*

Filed June 20th, 1876.

CHAS. MOORE, JR.,
Dep'y Clerk.

Writ of Prohibition from U. S. Circuit Court.

Circuit Court of the United States, Fifth Circuit and District of Louisiana.

MARIE P. EVANS and WILLIAM R. EVANS, Complainants,
vs.
DAVID URQUHART, THE STATE NATIONAL BANK OF THE CITY OF NEW ORLEANS, and J. MADISON WELLS, Junior, Defendants.

The President of the United States to J. Madison Wells, Junior, and David C. Paul, sheriff of the parish of Rapides:

Whereas it has been represented to us in our said circuit
1467 court on the part of Marie P. Evans and William R. Evans, complainants, by a supplemental bill of complaint lately exhibited against you, J. Madison Wells, Junior, and others, touching certain matters and things therein set forth: Now, therefore, in consideration of the premises and of the allegations in said supplemental bill of complaint contained, you, the said J. Madison Wells, Jr., & David C. Paul, sheriff, & your attorneys and each of you are hereby commanded and strictly enjoined under the penalty of the law that you absolutely refrain and desist from interfering with the authority and possession of Marie P. Evans, one of the complainants in this suit, as the sole heir and universal legatee of Stephen D. Linton, deceased, or of her possession and controle as such over the Quantico plantation and her rights as such heir and universal legatee, as set forth in the original bill of complaint in this cause, and also desist and refrain from proceeding to sell and dispose of said Quantico plantation or any part or portion thereof or from doing any other act injurious to or interfering with the said Marie P. Evans
1468 as the sole heir and universal legatee of the said Stephen D. Linton in respect to the said Quantico plantation until the further order of this court.

Witness the Honorable Morrison R. Waite, Chief Justice of the

Supreme Court of the United States, at the city of New Orleans, this — day of June, in the year of our Lord 1876.

[SEAL.] (Signed) F. B. VINOT, *D'y Clerk.*

Filed June 20th, 1876.

CHAS MOORE, JR., *D'y Clerk.*

Parish Court Judgment.

The motion to set aside the injunction in this case is overruled, the reasons not being sufficient.

June term, 1876.

H. L. DAIGRE,
Parish Judge.

Defendant's Motion to Dismiss.

Parish Court, Rapides Parish.

J. MADISON WELLS, Jr., Dative Executor,
vs.
MARY P. EVANS.

Now comes the defendant and moves the court in the above-entitled cause to dismiss this suit on the grounds that defendant is a married woman, and cannot be brought into court unless her
1469 husband is sued and cited with her. Wherefore she prays that the suit be dismissed with costs.

W. F. BLACKMAN, *Attorney.*

Filed June 23d, 1876.

CHAS. MOORE, JR.,
Dep'y Clerk.

Defendant's Petition to Remove Cause to U. S. Circuit Court.

To the hon. the judge of the parish court of the parish of Rapides:

The petition of Mrs. Marie P. Evans and of her husband, William R. Evans, respectfully shows:

1st. That petitioners are citizens of the State of Pennsylvania, residing at Philadelphia, in said State, and that plaintiff in the above entitled and numbered cause is a citizen of the State of Louisiana, residing in the parish of Rapides, in said State, and that each were citizens of said respective States at the date of the institution of this suit.

2nd. That said plaintiff, J. M. Wells, Jr., claiming to be dative testamentary executor of Stephen D. Linton, has instituted his said suit in this honorable court praying for a writ of injunction
1470 to be issued by this court enjoining and restraining your petitioners and the sheriff of the parish of Rapides from executing a certain writ of possession issued by this honorable court and directed to said sheriff ordering and commanding him to put

your petitioners in the possession of a certain plantation known as the Quantico plantation and other property situate in said parish of Rapides; that the value of the possession of said property largely exceeds the sum of five hundred dollars, and they now claim a removal of the above numbered and entitled cause unto the circuit court of the United States for the fifth circuit and district of Louisiana, returnable therein on the first day of its next session, to — holden at the city of New Orleans on the first Monday of November, A. D. 1876; to which end they now tender a good and sufficient bond, as required by law.

Wherefore petitioners pray that said cause may be ordered to be removed unto the said United States circuit court according to law.

MARIE P. EVANS.
WILLIAM R. EVANS.

1471 CITY OF NEW ORLEANS, }
State of Louisiana. }

Marie P. Evans, being first duly sworn, says that she is one of the defendants in this aforesaid suit, and at the time of the institution thereof both she and her husband were & they still are citizens of the State of Pennsylvania, and that said plaintiff, J. M. Wells, Jr., was & still is a citizen of the State of Louisiana, and that the matters in dispute in said suit exceed in value the sum of one thousand dollars.

MARIE P. EVANS.

Subscribed and sworn to before me this 15th day of July, 1876.
WM. H. HOLMES,
Second Justice of the Peace, Parish of Orleans.

Order.

Let the prayer of the foregoing petition be granted and the suit be removed as therein asked upon petitioners giving bond in the sum of five hundred dollars.

Filed Aug'st 22nd, 1876.

C. L. RANSDELL, *Dep. Clerk.*

Bond.

Know all men by these presents that we, Mrs. Marie P.
1472 Evans and her husband, William R. Evans, of Philadelphia, in the State of Pennsylvania, as principal-, and J. S. Bouchard, of New Orleans, in the State of Louisiana, as surety, are held and firmly bound unto J. M. Wells, Jr., styling himself dative testamentary executor of the late Stephen D. Linton, of the parish of Rapides, State of Louisiana, in the sum of five hundred dollars, lawful money of the United States of America; for the payment of which we do by these presents firmly bind ourselves, our heirs, our executors and administrators, unto the said J. M. Wells, Jr., styling himself executor as aforesaid, his successors and legal representatives.

Dated at New Orleans, La., this 15th day of July, 1876.

The condition of this bond is such that whereas the said Marie P. Evans and her husband, William R. Evans, have filed their petition in the parish court of the parish of Rapides, praying for the removal of a certain suit therein depending, whereas the said J. M. Wells, Jr., styling himself executor as aforesaid, is plaintiff and the said Mrs. Marie P. Evans and her husband, William R. Evans, *et al.* are defendants, No. 1173 on the docket of said court, unto the
1473 circuit court of the United States for the fifth circuit and district of Louisiana:

Now, therefore, if the said Mrs. Marie P. Evans and her husband, William R. Evans, shall enter in said United States circuit court, on the first day of its next session to be holden at New Orleans, in said district, a copy of the record of said suit and pay all costs that may be awarded by said circuit court if it shall hold that said suit was wrongfully or improperly removed thereto, then this obligation shall be null and of no further force and effect.

MARIE P. EVANS.
J. S. BOUCHARD.

I hereby authorize my wife to sign the above obligations.
WILLIAM R. EVANS.

Filed August 22nd, 1876.
C. L. RANSDULL, *D'y Clerk.*

Plaintiff's Exception.

Parish Court.

J. M. WELLS, Jr., Adm'r, *vs.* M. P. EVANS. } 1173.

In this cause the plaintiff comes, and, without naming any of his rights to service, & only because forced to appear, to prevent an *ex parte* trial of the petition of the defendant to remove this
1474 suit to the United States court, excepts to the proceedings on the following grounds:

1st. Because he has not been made a party to said application either by the prayer of the petitioner or service thereof.

2nd. Because the said application is not the first appearance of the pl'ff in said cause.

3. Because the said suit, being a contest between the executor and legatee, is entirely a probate proceeding, of which the courts of the United States have no jurisdiction.

4th. Because the amount in dispute is not over five hundred dollars, and no sufficient bond.

R. J. BOWMAN,
Acting for J. M. WELLS.

Filed August 28th, 1876.
C. L. RANSDELL, *D'y Clerk.*

Judgment of Parish Court on Application to Remove Cause.

Parish Court, Parish of Rapides.

J. M. WELLS, Executor,
vs.
Mrs. — P. EVANS *et al.* } No. 1168, 1173.

These causes coming on for trial upon the application of defendant to have them removed to the United States district court,
1475 & the court having taken the same under advisement, and the law and the evidence being in favor of pl'ff & against the said application, it is therefore adjudged and decreed that the said application for removal be rejected with cost.

Thus done and signed 24th October, 1876.

H. L. DAIGNE,
Parish Judge.

Filed Oct. 24th, 1876.

C. L. RANSDELL,
Dep'y Cl'rk.

Testimony of Plaintiff.

J. M. WELLS, Pub. Adm'r,
vs.
Mrs. MARIE P. EVANS. } 1173.

Note of testimony offered — the probate proceedings in the succession of Linton, No. 248.

The petition of Marie P. Evans and the order thereon filed in said succession May 17th, 1876, marked "A."

The petition and the judgment thereon filed in said succession July 13th, 1875, m'k'd "B."

DAVID C. PAUL, sworn, says:

I am acquainted with the property in this neighborhood known as the Quantico plantation. Mrs. Evans has not been in the possession of this plantation since the war. Mr. C. L. Robinson has been in the possession of that place during that time.

R. J. BOWMAN, sworn, says:

1476 Mr. Robinson holds possession of the Quantico plantation at present as lessee of J. M. Wells, Jr., executor. I, as attorney, was about issuing a writ of possession under the judgment rendered in the suit of J. M. Wells, adm'r, *vs.* Heyman & Robinson, when Mr. Robinson came up and surrendered the possession of the property to the executor.

Testimony closed.

C. L. RANSDELL, *Dep. Clerk.*

Judgment of Parish Court.

Parish Court, Parish of Rapides.

J. M. WELLS, Jr., Ex., *vs.* MARIE P. EVANS *et al.* } No. 1173.

This cause coming on for trial on the default, & the law & the evidence being in favor of the plaintiff, it is therefore ordered by this hon. court — recognizing the said Marie P. Evans as universal legatee of S. D. Linton and ordering her to be put in possession of the property of said succession be declared null and void, and that injunction enjoining the said M. P. Evans and her husband, William R. Evans, & the sheriff from attempting to execute said *ex parte* — & the said order ordering a writ of possession to issue be made perpetual.

It is further ordered that the defendant, M. P. Evans, pay the cost of suit.

1477 Thus done and signed in open court on this 24th Oct., 1876.

H. L. DAIGRE,
Parish Judge.

Filed Oct. 24th, 1876.

C. L. RANSDELL,
Deputy Clerk.

Defendant's Petition for Appeal.

Probate Court, Parish of Rapides, La.

WELLS, Public Executor, *vs.* MARY P. EVANS. } No. 1173.

To the parish judge of Rapides parish:

The defendant, Mary P. Evans, asks an appeal from a judgment rendered against her in the above-entitled and No. case on your docket. Said judgment was rendered at the October term of your court, 1876; the amount in dispute is over five hundred dollars. She says there was error in judgment in thi-, to wit: That judgment should be rendered in her favor instead of against her. She asks for a devolutive appeal, returnable to the supreme court at N. Orleans on second Monday in February, 1877, on giving bond according to law.

M. RYAN, *Att'y.*

Let an appeal be granted as prayed for on petitioner giving
1478 bond according to law in the sum of fifty dollars.

JOHN CLEMENTS,
Parish Judge.

Parish court, parish of Rapides, La.
Filed Jan'y 11th, 1877.

J. H. RANSDELL, *Clerk.*

Appeal Bond.

Know all men by these presents that we, Mary P. Evans, as principal, and M. Ryan, as security, are held and firmly bound unto Jame- H. Ransdell, clerk of the district court for Rapides parish, and his successors in office, in the sum of fifty dollars; for the payment whereof we bind ourselves, our heirs, administrators, and executors, firmly by these presents.

Dated at Alexandria, La., on this 11th day of January, A. D. 1877.

Whereas the above-bounden Mary P. Evans has taken a devolutive appeal from a final judgment rendered against her in the suit of J. M. Wells, executor, *vs.* Marie P. Evans, in the parish court in and for the parish of Rapides, Louisiana, on the 23d day of Oct., A. D. 1877, and No. 1173:

1479 Now, the consideration of the above obligation is such that the above-bound Mary P. Evans and —— —— shall prosecute her appeal and shall satisfy whatever judgment for costs may be rendered against her, or that she shall be satisfied by the proceeds of the sale of her estate, real or personal, if she be cast in the appeal; — that the said M. Ryan, security, shall be liable in her place.

M. P. EVANS,
Per M. RYAN *Atto'y.*
M. RYAN, *Security.*

Filed January 11th, 1877.

J. H. RANSDELL, *Clerk.*

Petition in Suit No. 1769.

J. M. WELLS
vs.
O. K. HAWLEY, Administrator.

To the honorable the judge of the 9th judicial district, holding sessions in & for the parish of Rapides:

1480 The petition of J. Madison Wells, of the parish of Jefferson & said State, respectfully represents that Orestis K. Hawley, in his capacity of public administrator of Stephen D. Linton, is justly indebted to your petitioner in the sum of eight thousand five hundred & forty dollars, with five per cent. per annum interest from Jan., 1867, for this, viz: That on about the 4th of August, 1863, the said Stephen D. Linton, through his agent, J. Perkins, appointed petitioner his agent to manage and take care of his plantation in the parish of Rapides, known as the Quantico plantation; to manage & take care of said plantation, with its horses, mules, and other stock, as well as to gather the crops.

That petitioner accepted said agency & discharged the duties as such from the said 4th day of Aug., 1863, to the last of January, 1867; that his services as such agent *was* worth the sum of twenty-five hundred dollars per annum.

Petitioners further represents that he has presented his said claim for services to the said O. K. Hawley for acknowledgement or — allow the same.

1481 Wherefore petitioner prays that the said O. K. Hawley, in his said capacity, be duly cited to appear before your hon. court to answer this petition, and after due proceedings that he be decreed to pay your petitioner in the due course of administration the said sum of eight thousand five hundred & forty dollars, with five per cent. per annum interest thereon from the *of* 1st January, 1867, and cost of suit.

R. J. BOWMAN,
Att'y for Plaintiff.

District court, parish of Rapides.
Filed Nov. 7th, 1871.

V. LEDEAUX, *Clerk.*

Service accepted & citation waived.

ROB'T P. HUNTER,
Att'y for Def't, O. K. Hawley, Administrator.

Answer.

District Court, Parish of Rapides.

J. M. WELLS
vs.
O. K. HAWLEY, Administrator. } No. 1769.

In this case, for answer to plaintiff's demand, defendant denies all & singular the allegations contained in plaintiff's petition.

1482 Further answering, he denies specially the agency of plaintiff as alleged.

Respondent specially denies that the plaintiff performed any service as claimed worth any amount of money, but if he did render any such services he was amply paid therefore by the rents and revenues of the place for the time. If any such services were rendered & not paid for the claim of the plaintiff herein has been transfer-ed by him to Coleman M. Calvit, and this action is barred by the said transfer.

Further answering, respondent specially pleads the prescription of one, two, three, & five years in bar of plaintiff's action, & prays to be hence dismissed with costs.

R. P. HUNTER,
Att'y for Respondent.

District court, parish of Rapides, La.
Filed Dec. 7th, 1871.

CHARLES OWENS, *D'y Clerk.*

Judgment of District Court.

9th District Court, Parisish of Rapides. December Term, A. D. 1871.

J. MADISON WELLS
vs.
ORESTES K. HAWLEY, Adm'r Succession of S. D. Linton; COLEMAN M. CALVIT, Intervenor. } No. 1769.

1483 Judgment.

This case having been assigned for trial & regularly called for trial on the day of assignment, and the trial having been proceeded with, & the law & the evidence being in favor of defendant, Oretus K. Hawley, public administrator & administrator of the succession of Stephen D. Linton, & against the plaintiff, intervenor, it is therefore ordered, adjudged, & decreed that the plaintiff, J. Madison Wells, take nothing by his suit. It is further ordered, adjudged, & decreed that Coleman M. Calvit, the intervenor, take nothing by his suit, & that both their claims be rejected. It is still further ordered, adjudged, & decreed that Orestes K. Hawley, administrator as aforesaid, recover & have from the said J. Madison Wells & Coleman M. Calvit the costs of this suit, to be taxed.

This done, read, & signed in open court on this 5th day of January, A. D. 1872.

J. OSBORN,
District Judge.

Filed January 5th, 1872.

CHARLES OWENS,
Deputy Clerk.

1484 *Judgment of Supreme Court.*

Supreme Court of the State of Louisiana.

J. M. WELLS
vs.
O. K. HAWLEY, Administrator. } No. 3818.

CLERK'S OFFICE, NEW ORLEANS, *April 22nd*, 1872.

Appeal from the ninth judicial district, parish of Rapides.

Mr. Justice Howe delivered the opinion of the court in the words and figures following, to wit:

The plaintiff claimed the sum of $8,540 from the defendant, as the administrator of S. D. Linton, for services alleged to have been rendered by him as agent to manage and care for the plantation of Linton in the parish of Rapides from August, 1863, to January, 1867. An intervention in the case was dismissed, & the intervenor has not appealed. The defence before us is a general denial & plea

of prescription of one, two, three, & five years. There was judgment rejecting the claim of plaintiff, & he has appealed. We see no error in the judgment.

The services of plaintiff appear to have been of a twofold
1485 nature or nature as overseer in 1863, in ginning certain cotton & as agent in caring for the place at the request of Perkins, the agent of Linton. The testimony is vague & unsatisfactory so far as the claim of overseeing it is prescribed by these years. Rev. C. C., 3538. So far as the claim is for compensation as *inaudatory* the written acknowledgment fixes none & the contract is by its nature gratuitous. Rev. C. C., 3991. We find nothing in the evidence that is sufficient to rebut the presumption thus established by law—that the services of plaintiff, a neighbor of Linton, were performed inertly as an act of neighborly kindness. 21st Ann, 538; Wood *vs.* McCranie.

Jud-ment affirmed.

A true copy.

M. P. JULIAN,
Deputy Cl'k.

District court, parish of Rapides, La.
Filed May 20th, 1872.

CHAS. OWENS,
Deputy Clerk.

Document Sued on.

QUANTICO PLANTATION,
PARISH OF RAPIDES, *Aug-st 4th*, 1863.

Articles of agreement made between S. D. Linton & Mr. J. M. Wells, viz:

J. M. Wells agrees to gin and bale the cotton now on this
1486 plantation; also to gather the cane now in the field, & to charge a reasonable price, based on a good currency, and to take the stock of cattle, hogs, mules, & horses, based on a like currency. Said Wells is also appointed by me as my agent to act for me in my absence in the mana-ment of said plantation; to sue & be sued in my name in defending my interest.

S. DUNCAN LINTON,
Per J. PERKINS.

Dist. court, parish of Rapides.
Filed Dec. 25th, '71.

CHAS. OWENS, *D'y Clerk.*

Petition of Plaintiff.

No. 1793.

To the honorable the judge of the ninth judicial district court, holding its sessions in and for the parish of Rapides, State of Louisiana:

The petition of William Morris, a resident of the parish of Rapides, State of Louisiana, respectfully represents that the estate of Stephen

Duncan Linton, duly opened in said parish & of which
1487 Orestus K. Hawley, public administrator for said parish, is the administrator, justely owes *owes* your petitioner a balance for wages as overseer during the years 1853, 1854, & 1855 of six hundred dollars, with legal interest from January 1st, 1856, until paid; that his services were rendered faithfully for said S. Duncan Linton on his plantation in the parish aforesaid; that he acknowledged he owed said balance & promised to pay the same, but did not; that his duly authorized agent acknowledged said claim or account in writing to be correct & just, & promised to pay the same; also verbally & repeatedly in the name of his principal; that he has presented his claim to O. K. Hawley, who refuses to pay the same or to formally accept it and place it in its proper place on the tableau of the debts of the succession; that he has lost all the written evidence of the acknowledgment of his said claim or it has been destroyed, but he will be able on the trial hereof to es-blish the fact and to prove his demand. A bill of items is hereto affixed for reference.

Wherefore your petitioner prays that O. K. Hawley, public
1488 administrator, in his capacity of administrator of said succession, a resident also of said parish of Rapides, be duly cited to appear and answer hereto, & after due course of law he have judgment against said succession represented aforesaid in the sum of six hundred dollars, with five per cent. interest from January 1st, 1856, until paid, & costs of suit.

Your petitioner prays for all other & further orders necessary in the premises, and for general and equitable relief.

H. S. LASEE,
Att'y for Plaintiff.

District court, parish of Rapides.
Filed Dec. 5th, 1871.

C. V. LEDOUX, *Clerk.*

Bill of Items.

Estate of S. Duncan Linton to Wm. Morris, Dr.

To services as overseer for the years 1853, 1854, & 1855, at $900	$2,700
Credit by amount paid	2,100
	600

Balance due, six hundred dollars, with five per cent. interest from January 1st, 1856.

Alexandria, Nov. 1871.

1489 *Acceptance of Service.*

Service of citation and petition accepted & time waived.
Dec. 5th, 1871.

ROB'T P. HUNTER,
Att'y for Defen-ant, O. K. Hawley, Administrator.

Answer of Defendant.

District Court, Parish of Rapides.

WM. MORRIS
vs.
ORESTUS K. HAWLEY, Adm'r Suc. Linton. } No. 1793.

For answer to plaintiff's demand defendant denies all & singular the allegations in plaintiff'- petition, & specially pleads the prescription of three, five, and ten years in bar of plaintiff'- action, and prays to be hence dismissed with his costs.

ROB'T P. HUNTER,
Atto'y for Respondent.

Parish of Rapides, La.
Filed December 7th, 1871.

CHAS. OWEN, *D'y Clerk.*

Petition of Intervention.

WILLIAM MORRIS
vs.
1490 O. K. HAWLEY, Public Adm'r and Adminis'r of S. D. Linton. } No. 1793.

To the honorable the judge of the ninth judicial district of Louisiana, sitting in and for the parish of Rapides:

The petition of Mary P. Linton, a resident of Louisiana, and of Charlotte B. Linton, Widow Surget, a resident of Mississippi, both temporarily sojourning at Bordeaux, France, prays leave to intervene in this suit. They allege that they are the sist*i*rers and sole heirs of the deceased Stephen Duncan Linton, and have accepted his succession with benefit of inventory, and have appointed a special attorney to represent them, and are the only proper representatives of his succession. They deny that plaintiff has any right to represent that succession, for the reason that the office of public administrator, by virtue of which he claims to represe-t it, has been abolished by the repeal of the law that created it, and, secondly, for the reason that said succession cannot be legally opened in the parish of Rapides, since the deceased was never a resident of that
1491 parish at any time, and hence the public administrator of that parish has no jurisdiction of the succession, nor has the court of said parish any jurisdiction thereof.

Intervenors deny all and singular the allegations of plaintiff.

They deny any indebtedness as charged, and allege that this claim is trumped up for the purpose of despoiling the succession.

They plead the prescription of three years to the demand of plaintiff, and pray that it be dismissed, with costs. They pray for service

of this petition and citation on both plaintiff and defendant, & for general relief.

T. C. MANNING,
Attorney for Interveners.

Service accepted.

ROB'T P. HUNTER,
Attorney for O. K. Hawley.
H. S. LASER,
Att'y for Plaintiff.

District court, parish of Rapides, Louisiana.
Filed May 7th, 1872.

CHAS. OWEN, *D'y Clerk.*

1492 *Defendants' Answer to Intervention.*

WM. MORRIS
vs.
O. K. HAWLEY, Pub. Administ'r; MARY P. LINTON, *et al.*, Intervenors. } No. 1793.

Now comes Orestes K. Hawley, public administrator in and for Rapides parish, and as such duly appointed and qualified by order of the honl. probate court, administrator of the succession of Stephen Duncan Linton, and for answer to the intervention filed herein denied generally each and every allegation contained therein.

For further answer he specially denies the right of the interveners to interfere herein.

He alleges that he has been duly appointed administrator of Linton's succession; that he has given an official bond, with good and solvent securities, and that when the interveners see fit they can proceed upon his said bonds for any alleged malfeasance of his in the administration of the said succession. He denies that they have the right to interfere with him in the present instance in any manner, and alleges that a contest between them and himself is a matter
1493 for settlement in the probate court, where all successions must be opened and closed, and where disputes between him and fiduciaries must be decided, and that this court is incompetent to try the issue here presented.

He alleges that the charges made in said intervention as to collusion between the plaintiff and himself is wholly untrue and without a shadow of foundation in fact.

He shows that he has employed counsel at a fixed and moderate compensation to defend the said succession against the claims of the present plaintiff and others, and that he has already filed his answer to the suit of this plaintiff in which issues are raised that tend the more certainly to defeat his said claim than those urged by these intervenors.

He alleges that the interference herein — these intervenors is wholly unnecessary and without warrant of law; that he is entirely competent to defend this suit without their assistance or counsel.

He prays, therefore, that the intervention be dismissed at the cost of the intervenors and for general relief.

ROB'T P. HUNTER, *Att'y.*

Filed May 11th, 1872.

CHARLES OWEN, *D'y Clerk.*

1494 *Answer of Plaintiff to Intervention.*

District Court, Parish of Rapides, Louisiana.

W. W. MORRIS
vs.
O. K. HAWLEY, Public Admi'r. } No. 1793.

In this cause now comes the original plaintiff herein and in answer to the petition of intervenors denies each and every allegation in his petition contained and prays that the suit in intervention be dismissed at intervenors' costs & for general relief.

H. S. LASER,
Att'y for Plaintiff Morris.

Filed May 13th, 1872.

CHAS. OWEN, *D'y Clerk.*

Summons for Witnesses.

STATE OF LOUISIANA, }
Parish of Rapides. }

District Court.

WM. MORRIS
vs.
O. K. HAWLEY, Adm'r. } No. 1793.

To J. Madison Wells, William Morris:

1495 You are hereby summoned to appear before the district court, parish of Rapides, at the court-house, in the town of Alexandria, on the 15th inst. (Wednesday), as a witness in the above-entitled cause on the part of the plaintiff, to attend from term to term until discharged; and hereof you are not to fail under penalty of law.

Clerk's office, the 11th May, 1873.

C. V. LEDOUX, *Cl'k.*

Sheriff's Return.

On 13th day of May, A. D. 1872, I made service of the above subpœna by delivering a certified copy of the same to J. Madison Wells in person & Wm. Morris in person.

JOHN DE LACEY, *Sheriff.*

Judgment.

District Court, Rapides Parish. December Term, 1873.

WM. MORRIS
vs. } 1793.
SUC'N OF S. D. LINTON.

This caused having been called pursuant to assignment and the plaintiff having been called according to law, in open court, to come forward and prosecute his suit, and no appearance being made
1496 either by himself or counsel, and the law and the evidence favoring the defendant, it is now ordered, adjudged, and decreed that the suit be dismissed at plaintiff's costs as in case of non-suit.

Thus done, read, and signed in open court this 10th of January, A. D. 1874.

J. OSBORN,
District Judge.

Filed January 10th, 1874.

CHAS. OWEN, *D'y Clerk.*

"*Minutes of the Court.*"

ALEXANDRIA, LOUISIANA,
THURSDAY, *Oct.* 21*st*, 1875.

The parish court met in pursuance to adjournment, his honor H. L. Daigre presiding.

Minutes of the day previous read and approved.

No. 248. Stephen D. Linton for probate of will. Action to annul.

October 25th, A. D. 1875.—Exceptions filed.

October 27th, A. D. 1875.—Suit dismissed. See decree.

Motion for a new trial refused.

1497 Appeal granted on the judgment dismissing the suit brought by the public administrator to set aside a judgment in this case, putting the universal legatee in possession of this succession. Devolutive appeal, fifty dollars, suspensive according to law, returnable to the next term of the supreme court, held in New Orleans second Monday in February, 1876.

All the above minutes signed by H. L. Daigre, parish judge.

Attest: CHAS. MOORE, JR.,
Deputy Clerk.

ALEXANDRIA, RAPIDES PARISH, LOUISIANA,
MONDAY, *Nov.* 19, 1877.

The parish court met for the probate term according to law, his honor Judge Clements presiding.

No. 248, succession of Stephen Duncan Linton set for Monday, the 27th instant.

NOVEMBER 26TH, 1877.

On motion, it is ordered that the return day of the commission to take testimony of E. T. Merrick *et al.* be extended to the next
1498 term of this court. It is further ordered that leave be granted to take testimony of witnesses in and out of the State.

JANUARY 28TH, 1878.

Opposition of State National Bank filed. Opposition of Charles E. Fenner filed.

On motion, ordered that the account be homologated so far as not app-a-sed.

JANUARY 30TH, 1878.

Ordered that Mrs. Marie P. Evans be authorized to stand in judgment in the opposition filed. Mrs. Marie P. Evans being in open court, her counsel, Mr. Ryan, made the following motion: Moves the court that her opposition be dismissed, and consents that the dative testimentary executor distribute the funds in his hands as the executor proposes in said account.

The case was then taken up on opposition of State National Bank and Charles E. Fenner and trial entered into.

JANUARY 31ST, 1878.

This case was taken up & trial proceeded with, the case submitted & taken under advisement.

FEBRUARY 1ST, 1878.

Judgment decreeing that the account filed by administrator be amended so as to allow R. J. Bowman five hundred and fifty
1499 dollars instead of seven hundred and fifty dollars, as put down as item No. 12 on the said account; and it be further amended by allowing William Grant, transferee and owner, three hundred dollars instead of $600.00, as placed in item No. 15 on said account as thus amended. It is further ordered and decreed that the account be homologated and made the judgment of this court. Appeal prayed for and granted in open court to the opponent, State National Bank, made returnable to the next term of the supreme court, to be held in the city of New Orleans on the second Monday of February, 1878. Devolutive appeal bond in the sum of one hundred dollars, suspensive according to law.

Appeal prayed for and granted in open court to opponent Charles E. Fenner, made returnable to the supreme court, at New Orleans, on the second Monday of February, A. D. 1878. Devolutive appeal bond in the sum of one hundred dollars, suspensive according to law.

Appeal prayed for and granted to William Grant, made returnable to the supreme court, at New Orleans, on the 2nd Monday of February, A. D. 1878. Devolutive appeal bond in the sum
1500 of one hundred dollars. Suspensive appeal bond according to law.

The above and foregoing minutes signed by

JOHN CLEMENTS,
Parish Judge.

STATE OF LOUISIANA, }
Parish of Rapides. }

ALEXANDRIA, *Jan'y 5th*, 1880.

The parish court met for civil ordinary term, according to law, his honor Judge J. R. Thornton presiding.

No. 248, succession of S. D. Linton.—Judgement of homologation and the executor discharged upon payment of the claims of the various creditors therein named.

(Signed) J. R. THORNTON,
Parish Judge.

Attest: C. L. RANSDELL, *D'y Cl'k.*

1501 *Judgment.*

STATE OF LOUISIANA, }
Parish of Rapides. }

Parish Court.

In the Matter of the Succession of S. D. LINTON. No. 248.

Parish Court. January Term, A. D. 1878.

This case coming on for trial on the provisional account and the opposition thereto, and the law and the evidence being in favor of the judgment herein rendered, it is therefore ordered, adjudged, and decreed that the item of taxes be reduced from twelve hundred and fifty-two $\frac{35}{100}$ to the sum of eleven hundred and sixty-five $\frac{91}{100}$ (1,165.91) dollars, the latter amount — be ascertained by the receipt of the tax collector, produced by the attorney of the purchaser on the trial of said account.

It is further ordered and decreed that item No. 12 be reduced from seven hundred and fifty ($750.00) to five hundred and fifty ($550.00) dollars, and item No. fifteen be reduced from six hundred ($600.00) to three hundred ($300.00) dollars.

1502 It is further ordered, adjudged, and decreed that the State National Bank be recognized as mortgage creditor against said succession for the sum of eighty thousand six hundred and sixty-six $\frac{66}{100}$ ($80,666.33) dollars, with eight per cent. per annum thereon on the sum of $10,833.33 from 13 January, 1862; on like sum of $10,833.33 from 13 February, 1862; on like sum of *of* $10,833.33 from 13 March, 1862; on like sum of *of* $10,833.33 from 18 March, 1862; on like sum of $10,833.33 from 13 January, 1863; on like sum of $10,833.33 from 13 March, 1863; on like sum of $10,833.33 from 18 March, 1863; on like sum of — with twenty-six dollars costs, cost of protest, with 5 per cent. on said sum and interest thereon and att'y's fees, and on the final account of said executor the said bank be placed on said account with the rank and privilege as a mortgage creditor as aforesaid.

It is further ordered that Charles Fenner be recognized as a creditor for the sum of eight thousand, $8,000.00, dollars, with eight per

cent. per annum thereon, the 23d of November, 1858, and seven dollars $\frac{50}{100}$ cost of protest and costs of suit, and that said Fenner be placed on the final account of said ex-utor as an ordinary creditor for said sum as aforesaid.

1503 And it is further ordered and decreed that the provisional account filed by the executor as annexed herein be confirmed and homologated, and is made the judgment of this court.

Thus done and signed in open court on this the 5th day of February, A. D. 1878.

JOHN CLEMENTS,
Parish Judge.

Bill of Exceptions on the Opposition of Account of Executor.

Parish Court.

In the Matter of the Succession of S. D. LINTON. No. 248.

Be it remembered that on the trial of the opposition to the account of the executor — offered to prove by R. A. Hunter that the Quantico plantation was at the institution of the suit of O. K. Hawley, public adm't'r, *vs.* A. Heyman *et als.* worth at least twenty-five thousand dollars, the amount at which said property was inventoried in 1870, in rebut-al to the testimony of opponents; that the attorney's fees were disproportionate to the value of the succession, to which the opponents objected on the grounds that said testimony offered was not rebut-al to any testimony offered by *him;*

1504 which said objection was sustained by the court and testimony rejected; to which said ruling of the court the executor excepted and tenders this bill for the signature of the court.

January 31, 1878.

JOHN CLEMENTS,
Parish Judge.

Bill of Exceptions on the Part of the Executor.

Succession of S. D. LINTON. No. 248.

On trial of opposition to account of J. M. Wells, dative testamentary executor.

Be it remembered that on the trial of this cause, when counsel for opponents had asked R. P. Hunter, a witness sworn on the part of the executor to sustain item No. 15 for $600.00 in favor of Wm. Grant, transferee—when opponents' counsel asked said witness what was the consideration for which he transfer-ed the said claim, the counsel for the executor objected to the question on the ground that that item was only opposed as being excessive and exhorbitant, and the transference of litigious right was not alleged, and he was taken by surprise, and the question was not competent and in-

1505 herant; which objection the court overruled and ordered the witness to answer the question for the following reasons:

That the question was pertinent to the issue of opposition of item No. fifteen (15) of administrator'- account.

JOHN CLEMENTS,
Parish Judge.

Agreement between the Attorneys.

In the Matter of the Succession of S. D. LINTON. No. 248.

In the appeal in this case it is agreed between the opponents and the executor that the clerk shall omit from the transcript copies of vouchers offered in evidence to save encumbering the record.

Feb'y 3d, 1878.

R. J. BOWMAN,
Atto'y for Executor.
J. G. WHITE,
A. CAZABAT,
Att'ys for Opposition.

Filed Feb'y 5th, 1878.

J. H. RANSDELL, *Clerk.*

Appeal Bond.

Know all men by these presents that we, State National
1506 Bank of New Orleans, as principal, and James G. White, as security, are held and firmly bound unto James H. Ransdell, clerk district court, parish of Rapides, and his successors in office in the sum of one hundred, $100.00, dollars; for the payment whereof we bind ourselves, our heirs, administrators, and executors, firmly by these presents.

Sealed with our seals and dated at Alexandria, La., on this — day of February, 1878.

Whereas the above-bounden State National Bank of New Orleans has obtained in open court an appeal from a final judgment rendered against it as opponent to the provisional account filed by James M. Wells, Jr., executor in the suit of succession of S. D. Linton, in the parish court in and for Rapides parish, Louisiana, No. 248 on the docket of said court, and signed on the 5th day of February, 1878:

Now, the condition of the above obligation is such that the above-bound State National Bank of New Orleans shall prosecute the appeal and shall satisfy whatever judgment may be rendered against it, or that the same shall be satisfied by the proceeds of the sale of its estate, real or personal, if it be cast in the appeal; otherwise
1507 the said James H. White, secretary, shall be liable in place.

STATE NATIONAL BANK
OF NEW ORLEANS,
By J. G. WHITE, *Attorney.*
J. G. WHITE.

Parish court, parish of Rapides, La.
Filed 5th day of February, 1878.

C. L. RANSDELL, *D'y Clerk.*

Appeal Bond.

Know all men by these presents that we, William Grant, as principal, and Robert P. Hunter, as security, are held and firmly bound unto James H. Ransdell, clerk, his executors, administrators, and assigns, in the sum of one hundred dollars; for the payment whereof we bind ourselves, our heirs, administrators, and executors, firmly by these presents.

Sealed with our seals and dated at Alexandria, La., on this fifth day of February, 1878.

Whereas the above-bounden Wm. Grant has taken an appeal from a final judgment rendered agains- him in the suit of succession of S. D. Linton, in the parish court in and for Rapides parish, La., on the 6th day of February, 1878:

Now, the condition of the above obligation is such that the above-bound Wm. Grant and —— —— shall prosecute this
1508 appeal and shall satisfy whatever judgement may be rendered against him or that the same shall be satisfied by the proceeds of the sale of his estate, real or personal, if he be cast in the appeal; otherwise the said Rob't P. Hunter, surety, shall be liable in place.

WM. GRANT,
Per ROBERT P. HUNTER, *Att'y.*
ROB'T P. HUNTER.

Parish court, parish of Rapides, La.
Filed 6th day of Feb'y, 1878.

C. L. RANSDELL,
Dep'y Clerk.

Appeal Bond.

Know all men by these presents that we, Charles E. Fenner, as principal, and James G. White, as security, are held and firmly bound unto James H. Ransdell, clerk district court, parish of Rapides, and his successors in office in the sum of one hundred dollars; for the payment whereof we bind ourselves, our heirs, administrators, and executors, firmly by these presents.

Sealed with our seals and dated at Alexandria, La., on this 4th day of February, 1878.

Whereas the above-bounden Charles E. Fenner has obtained in open court an appeal from a final jud-ment rendered against
1509 him as opponent to the provis-onial account filed by J. M. Wells, Jr., executor succession of S. D. Linton, in the parish court in and for Rapides parish, La., No. 248 on the docket of the said court, and signed on the 5th day of February, 1878:

Now, the condition of the above obligation is such that the above-bound Charles E. Fenner shall prosecute this said appeal and shall satisfy whatever judgment may be rendered against him, or that the same shall be satisfied by the proceeds of the sale of his estate, real

or personal, if he be cast in the appeal; otherwise the said James G. White, surety, shall be liable in place.

CHARLES E. FENNER,
By A. CAZABATT, *Att'y.*
J. G. WHITE.

Parish court, parish of Rapides, La.
Filed 5th day of February, 1878.

C. L. RANSDELL,
Dep'y Clerk.

Opinion and Decree.

Supreme Court of Louisiana.

Supreme Court of the State of Louisiana.

CLERK'S OFFICE, NEW ORLEANS, *April 29th*, 1878.

Succession of STEPHEN DUNCAN LINTON. No. 6999.

1510 On opposition to the executor's account.

Appeal from the parish court for the parish *parish* of Rapides.

Mr. Justice De Blanc delivered the opinion and decree of the court in the words and figures following, to wit:

J. M. Wells, Jr., the public administrator of the parish of Rapides, took charge as executor of the succession of Stephen Duncan Linton since the 7th of July, 1873. The only property of any value then owned by the succession and with which he had anything to do was a plantation appraised in 1870 at $24,000.00, in 1875 at $18,000.00, and which, on the 17th of March, 1877, was sold at public auction for $5,500.00.

Before 1873 the succession of Linton was under the administration of O. K. Hawley, then the public administrator of the parish of Rapides.

On the 9th of April, 1877, Wells filed, as executor of said succession, a provisional account of his administration, and the State National Bank and Charles E. Fenner oppose the allowance of nine of the items therein charged against the succession, to wit:

1511 1. Two different commissions, of 5% each, claimed by the executor and computed at $18,000.00, the amount of the inventory of 1875.

The other on $600.00, the amount of rents which he alleges he has collected.

2. Four accounts of R. J. Bowman, an attorney-at-law, aggregating $2,600.00, for professional services.

3d. A fee of $600.00, acknowledged by the executor as due R. P. Hunter and transfer-ed by the latter to William Grant.

4th. A claim of $300 of Race, Foster and Merrick for services in a Federal court; and,

5th. A charge in blank for unforeseen expenses.

The opponents *and* creditors of the estate for more than one hundred thousand dollars, and they complain that out of $6,100.00, the entire amount to be distributed, the executor proposes to retain for himself and to pay to his attorneys the sum of $4,430.00, leaving to be divided among themselves and others a balance of $1,670.

This court has long since "justly held that debts of a succession like those of ceding debtor are of a higher dignity and are to be paid before those of the deceased or the insolvent. As to them
1512 it is not merely a question of privilege. The services nominally rendered to the estate are in reality rendered to the heirs and creditors themselves. 3 M., 364."

It is always for a court a delicate task to fix the disputed value of an attorney's compensation. In this instant it is as difficult as delecate, for the evidence shows that the professional services for which the compensation is claimed have inured to the benefit of the succession, and that they are worth the amount allowed by the lower court, but the evidence also shows that if allowed in full the fees and commissions carried in the provisional account would absorb more than two-thirds of the entire assets of the succession. In 12th R., 414, Judge Martin, the organ of the court, said "that labor of an attorney ought to be rewarded according to its nature, extent, and the degree of skill and care it demands."

The case is certainly increased by the value of the estate, &c.

We consider, as did our predecessors, that in matters concerning successions when there is no hope of recovering beyond what the deceased has left, when the question is less what is due than what can be paid, the attorney's fees should be measured to the
1513 proportion of the estate. The succession of Linton appears to be more than twenty times insolvent, and we are bound to presume was completely insolvent from the day on which it was opened. It is and ever was the property of its creditors. This being conceded, to do what he has done to secure for them the sum of $5,500.00, what *it is* reasonable to believe that those creditors would have been disposed to offer and allow to Mr. Bowman?

The plantation and the rent due for the same composed the whole succession of Linton, and that plantation had passed from its possession. To recover that property a suit had become necessary, and that suit was conducted by Mr. Bowman in the district and supreme courts. Without his efforts and his services the succession would have been composed of exclusively debts and charges.

Under these circumstances, when, so far as we are informed, the whole of the troubles and labors of that litigation devolved on the att'y, is it probable that he would have been offered or would have accepted less than one-third of whatever he would secure for
1514 the succession? His efforts were successful, and we consider that for all the services for which he has rendered to said estate up to the time when this appeal was submitted to this court he is entitled to one-third of the assets which were realized by his industry—that is, one-third of $5,500.00.

This now dispences us from discussing whether the succession is or is not liable for the other claims of said attorney, as under any

circumstances it would be inequitable to allow him less that we proposed to do for those services, which it is admitted have been rendered to and are chargeable to the estate.

The cause which induces us to reduce Mr. Bowman's fees justifies the reduction of Messrs. Race, Foster and Merrick from $300 to $250.00. As to Mr. Hunter's claim, it was already partly disallowed, and we leave it as fixed by the parish court. The succession of Linton was opened in 1867, and it was in July, 1873, that Wells took charge of the same. It had then been partially administered by Hawley. The inventories were made, suits had been
1515 brought, and it is evident that at that date at least one-half of what was to be done to settle the succession of Linton had been accomplished, and it matters not whether Hawley did or did not receive any commissions. His successor's administration was a fractional one, and he can justly claim but a commission proportionate to his services, and what is at most two and a half per cent. on the inventory of 1875, or $450.00.

The code so expressly provides, and this court has thus invariably held. R. C. C., 1069, 1200, 1201; 5 N. J., 229; 1 R. R., 400; 3 A., 624; 4th A., 386.

As to the rent of six hundred dollars, no mention has been made in either of the inventories, and, presuming, as we do, that it was collected by Wells, we are of the opinion that he is entitled to a commission of five per cent. thereon.

Were it not that the succession of Linton was absolutely insolvent, that it appears to have been renounced by the heirs, and that the parties to *to* this controversy have placed before us an admission that since July, 1873, it has been administered upon by Wells in his capacity as public administrator of the parish of Rapides,
1516 we would have, under his own pleadings and according to the views expressed in the matter of the succession of Francois Bougene, lately deceded, by ourselves reduced his commissions to one-half of that of a dative executor, but we are precluded from doing so by the aforesaid admissions and the uncontradicted presumption that the estate of Linton is vacant.

The opposition to item No. 19 of the account cannot be sustained. That item, though in blank, provides for exclusively the costs of filing and homologating the account.

The amount of those costs is fixed by law, and, as that amount was not and could not have been positively and correctly ascertained when the tableau of intended distribution was deposited in court, the creditors' right can in no way be effected by the mere mention that, whatever they may be, they will have to be deduc-ed from and paid out of the funds to be distributed.

It is therefore ordered, adjudged, and decreed that the judgment of the lower court is amended, and that in lieu of the several amounts to them allowed in the provisional account filed by
1517 J. M. Wells, Junior, as executor of Stephen Duncan Linton, R. J. Bowman is hereby allowed eighteen hundred and thirty-three dollars and thirty-three and one-third cents; Race, Foster and

Merrick, two hundred and fifty dollars, and said Wells, four hundred and eighty dollars.

It is further ordered, adjudged, and decreed that as amended the judgment of the lower court is affirmed; that costs in the appeal be paid *in solido* by the said J. M. Wells, Junior, R. J. Bowman, Race, Foster and Merrick, and William Grant.

The chief justice recused himself in this cause, having been of counsel.

Rehearing.

On rehearing, by Mr. Justice Spence.

JANUARY 13TH, 1879.

The rehearing in this case was granted in order to reconsider the allowance made by us for attorneys' fees.

The evidence shows that the estate consisted originally of the plantation for the recovery of which the attorneys' fees are claimed. As the attorneys would have received absolutely nothing had their efforts failed, we do not believe that any attorney in good
1518 practice would, under those conditions, have undertaken the litigation in prospect at a less per centum than we have allowed. We see no reason to modify our former opinion and decree herein, and it is ordered that the same remain undisturbed.

A true copy.

[SEAL.] FRANK WALL,
Deputy Clerk.

Petition of J. M. Wells, Jr., Administrator, to File a Final Account.

Parish Court.

In the Matter of the Succession of S. D. LINTON. No. —.

In this case now comes J. M. Wells, Jr., administrator, and represents that he herewith files a final account of his administration, in accordance with a decree of the supreme court.

Petitioner prays that due notice be given of the filing of said account, and after due proceedings that said account be homologated and administrator discharged, and for costs & general relief.

R. J. BOWMAN,
Attorney for Administrator.

1519 *Order.*

The foregoing petition being considered, it is therefor- ordered that due notice be given of the filing of the foregoing account.

Thus done and signed on the 18th Dec., 1879.

J. R. THORNTON,
Parish Judge.

Final Account of J. M. Wells, Junior, Executor of S. D. Linton.

Final account of J. M. Wells, Junior, executor of S. D. Linton, as amended by the supreme court.

To amount of proceeds		$6,100 00
By	1,165 91	
1. H. M. Robinson	42 00	
2. John De Lacy	42 90	
3. Democrat	6 00	
4. R. W. Bringhurst	15 00	
5. L. V. Mayre	10 00	
6. Charles Owens	35 00	
7. J. H. Ransdell	14 00	
8. Brief	10 00	
9. Brief	10 00	
10. J. M. Wells, commissioner	480 00	
1520		
12, 13, 14, & 18. R. J. Bowman	$1,833 33	
15. William Grant	300 00	
16. Merrick, Race & Foster	250 00	
17. J. H. Ransdell, clerk	32 05	
	$4,246 19	
Executor represents that the following costs were not included in said account, having been incur-ed subsequently to its filing, viz:		
For despositions in New Orleans	45 00	
January, 1878, paid clerk's costs	27 00	
Amount brought over	$4,318 19	
Paid clerks for inventories	2 00	
Attorney's fees for filing the final account	25 00	
Clerk's costs and advertisements	5 00	
	$4,350 19	

Affidavit of James H. Ransdell, Clerk.

Note of evidence.

Succession of STEPHEN D. LINTON. For Final Acc't.

Note of evidence.

JAMES H. RANSDELL, sworn, says: I am clerk of the district court and *ex officio* clerk of the probate court of the Rapides parish, La.

1521 The final account of the administration in the above numbered and entitled succession has been on file and has been advertised for more than ten clear days, and there has been no opposition to same filed.

Offers decree of supreme court in said succession.

Testimony closed.

J. H. RANSDELL, *Clerk.*

Order and Judgment of Homologation of Final Account.

In the Matter of the Succession of S. D. LINTON. No. —.

In this case the final account of the executor coming *as* for trial for homologation, and the law and the evidence being in favor thereof, it is therefore ordered that the said account be homologated, and that upon the payment of the claims thereon allowed that the executor be discharged.

Thus done and signed in open court on the 14th day of January, 1880.

J. R. THORNTON,
Parish Judge.

Filed January 14th, 1880.

JAMES H. RANSDELL, *Clerk.*

1522 *Certificate of Transcript.*

STATE OF LOUISIANA, }
Parish of Rapides. }

I, George O. Watts, clerk of the 12th judicial district court in and for the parish of Rapides and State of Louisiana, duly elected, commissioned, and qualified according to law, and sole keeper of the seal and records of said court, do hereby certify that the within and foregoing 403 pages contain a true, correct, and complete transcript of all the documents filed, all the testimony adduced, and all the proceedings had in the suit entitled the succession of Stephen Duncan Linton for probate of will, No. 248, probate court docket, Rapides parish, and State of Louisiana.

[SEAL.] In testimony whereof I have hereto set my hand officially and affixed the seal of this court, at Alexandria, Louisiana, on this the 3d day of January, A. D. 1882.

GEORGE O. WATTS, *Clerk.*

1523 *Certificate of Judge.*

STATE OF LOUISIANA, }
Parish of Rapides. }

I, Arestides Barbin, judge of the 12th judicial district court, duly elected, commissioned, and qualified according to law, do hereby certify that George O. Watts is the duly elected, commissioned, and

qualified clerk of the 12th judicial district court in and for the parish of Rapides and State of Louisiana and is now acting as such, and that he is the sole keeper of the seal and records of the said court, and that his acts and deeds as such are entitled to full faith and credit.

In testimony whereof witness my official signature on this the 3d day of January, A. D. 1882.

ARISTIDES BARBIN,
District Judge, 12th Judicial District Louisiana.

1524 *Certificate of Clerk.*

STATE OF LOUISIANA, }
Parish of Rapides. }

I, George O. Watts, clerk of the 12th judicial district court in and for the parish of Rapides & State of Louisiana, duly elected, commissioned, and qualified according to law, and sole keeper of the seal and records of said court, do hereby certify that Aristides Barbin is the judge of the 12th judicial district court and is now acting as such, and that he was duly elected, commissioned, and qualified according to law.

In testimony whereof witness my hand officially and seal of said court affixed at Alexandria, Louisiana, in this the 3d day of January, A. D. 1882.

[SEAL.] GEORGE O. WATTS, *Clerk.*

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1534 *Commission, Interrogatories, and Cross-Interrogatories to and Deposition of J. Madison Wells. Filed March 11th, 1884. Offered ex Necessitate by the State National Bank December 15th, 1884.*

UNITED STATES OF AMERICA.

Circuit Court of the United States for the Fifth Judicial Circuit, Holding Sessions in and for the Eastern Dist. of Louisiana.

To any judge, justice of the peace, United States commissioner, or notary public residing in the parish of Rapides, State of Louisiana:

Know ye that, reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to come before you J. Madison Wells, Cole Cavitt, and Jack Johnson, and them duly examine on the annexed interrogatories on oath touching and concerning certain matters and things in a case now depending in the said court wherein Marie P. Evans *et al.* are plaintiffs and the State National Bank and others are defendants, and the same examinations so taken and reduced to writing you certify under your hand and seal and send enclosed to this court without delay to be read in evidence on the trial of said cause; and send also this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 7th day of March, anno Domini 1884, and of the Independence of the United States of America the 108th year.

[SEAL.] (Signed) F. A. WOOLFLEY, *Clerk.*

1535 MARIE P. EVANS and HER HUSBAND *vs.* STATE NATIONAL BANK & Others. } No. 7672.

Interrogatories propounded on behalf of complainants to J. Madison Wells, Cole Cavitt, & Jack Johnson, of the parish of Rapides, Louisiana.

Interrogatory 1st. Were you acquainted with the late Stephen Duncan Linton?

Interrogatory 2nd. Did you in or previous to year A. D. 1863 know a plantation situated in the parish of Rapides belonging to said Stephen Duncan Linton? If yea, state the name by which it was known. Who was overseer on said plantation in the year 1863? Was there at that time any cotton thereon? If yea, how much?

Interrogatory 3rd. State whether in the year 1863 you held any

connection, official or otherwise, with property belonging to said Linton. If yea, state what connection, under what circumstances and authority you held it.

Interrogatory 4th. If, in answer to the above interrogatories, you should answer that your connection with the property of said Linton arose under certain seizure or seizures, please state from what court, in what suits, and under what kind of writs said seizures
1536 were made. State the source of your knowledge, and please annex such written evidence thereof as you may have in your possession.

(Signed) A. H. LEONARD,
Solicitor for Complainants.

CLERK'S OFFICE.

A true copy of the original on file.
New Orleans, March 7th, 1884.
[SEAL.] (Signed) F. A. WOOLFLEY, *Clerk.*

MARIE P. EVANS and HER HUSBAND
vs.
STATE NATIONAL BANK and Others. } No. 7672.

The State National Bank, one of the defendants in the above entitled and numbered suit, having been served with interrogatories propounded by complainant to J. Madison Wells, Cole Cavitt, and Jack Johnson, as witnesses, of the parish of Rapides, La., now comes and first excepts to the issuance of any commission herein or further taking of testimony by complainant in consequence of the order of this hon. court herein rendered on the 4th day of June, 1883, and further excepts to any statement or answer that may be given by said witnesses or either of them to said interrogatories or either thereof, but more especially the 3rd & 4th interrog-
1537 atories, on the ground that the answers thereto would not be the best evidence of the facts sought to be proved, the records and writs, etc., referred to being the best evidence. Parol proof thereof is inadmissible.

Respondent reserves all other legal objections and exceptions of every nature in the premises. Subject to said exceptions and objections respondent propounds the following cross-interrogatories:

1st cross-interrogatory: Where do you reside at this time, and what is your occupation?

2nd cross-interrogatory. Do you know the plaintiff in this suit personally? How long have you known her? Have you any interest in the result of this suit? If yea, state what that interest is.

3rd cross-interrogatory. If you of your own personal knowledge know any facts tending to show that the complainant should not recover judgment in this suit please state those facts.

(Signed) J. McCONNELL,
Sol. for State Nat. Bank.

CLERK'S OFFICE, *ss:*

A true copy of the original on file.
New Orleans, March 7th, 1884.

[SEAL.] (Signed) F. A. WOOLFLEY, *Clerk.*

1538 MARIE P. EVANS *et al.* *vs.* STATE NATIONAL BANK *et al.* } No. 7672.

Be it remembered that on this the tenth day of March, anno Domini eighteen huudred and eighty four, at my office, in the city of Alexandria, Rapides parish, State of Louisiana, I. Louis V. Marye, a notary public, duly commissioned and qualified and empowered to administer oaths and take depositions, acting under and by virtue of the annexed commission issued out of the honorable the United States circuit court for the eastern district of Louisiana in the case entitled Marie P. Evans *et al. versus* State National Bank *et al.*, and being No. 7672 of the docket of said court, have this day caused J. M. Wells to come before me, the attorney of complainant, J. E. Wallace, having dispensed with the production of the other witnesses named in the annexed commission.

JAMES MADISON WELLS, witness on behalf of complainant, being duly sworn, answered as follows to the—

First Interrogatory. Were you acquainted with the late Stephen Duncan Linton?

Answer to first interrogatory. I was.

1539 Second Interrogatory. Did you in or previous to year A. D. 1863 know a plantation situated in the parish of Rapides belonging to said Stephen Duncan Linton? If yea, state the name by which it was known. Who was overseer on said plantation in the year 1863? Was there at that time any cotton thereon; if yea, how much?

Answer to second interrogatory. I did know such a plantation; it was known as the Quantico plantation. In the commencement of the year 1863 Osmond Gaines was employed as the overseer of that plantation; he was superceded in August of the same year by William Morris. There was cotton on the plantation, ginned and unginned. I cannot tell the exact amount, but suppose there was between fourteen and eighteen hundred bales.

Third Interrogatory. State whether in the year 1863 you held any connection, official or otherwise, with property belonging to said Linton; if yea, state what connection, under what circumstances and authority you held it.

Answer to third interrogatory. After the seizure of the Quantico plantation by the sheriff under an order of the fourth district court of New Orleans I was placed as custodian of the property seized under that order, and remained the custodian until the 7th day of November of that year, when I left the parish. I left my overseer,

who was overseeing on the adjoining plantation, in possession
1540 of the Quantico plantation, and to give it the same attention during my absence as he gave my place, over which he had been hired to control.

Interrogatory fourth. If, in answer to the above interrogatory, you should answer that your connection with the property of said Linton arose under certain seizure or seizures, please state from what court, in what suits, and under what kind of writs *and* seizures were made. State the source of your knowledge, and please annex such written evidence thereof as you have in your possession.

Answer to fourth interrogatory. I am under the impression that my connection *of* the property grew out of a writ of seizure and sale issued from the fourth districct court of the city of New Orleans. I saw the writ under which the property was seized. I had the authority of the attorney here instructing the sheriff to place myself as custodian of the property until it was sold or otherwise ordered. That authority was filed in a suit of Coleman M. Calvit *versus* O. K. Hawley, the public administrator, who came in possession of the property in question by virtue of his authority as public administrator, having filed in the suit of Coleman M. Calvit against the public administrator all written authority of both the attorney and sheriff. I retained no other, and have no other written evidence in my possession.

Cross-Interrogatories.

First cross-interrogatory. Where do you reside at this time, and what is your occupation?

1541 Answer to first cross-interrogatory. I reside in the parish of Rapides; have no occupation just now.

Second X Interrogatory. Do you know the plaintiff in this suit personally? How long have you known her? Have you any interest in the result of this suit? If yea, state what that interest is.

Answer to second cross-interrogatory. I know her personally; have known her since 1863. I have no interest whatever in the result of this suit.

Third Cross-interrogatory. If you, of your own personal knowledge, know any facts tending to show that the complainant should not recover judgment in this suit please state those facts.

Answer to third cross-interrogatory. I don't know of any.

(Signed) J. M. WELLS.

Sworn to and subscribed before me this 10th day of March, A. D. 1884.

(Signed) L. V. MARYE, *N. P.*

It is hereby certified that on this the tenth day of March, A. D. eighteen hundred and eighty-four, at my office, in the city of Alexandria, Rapides parish, State of Louisiana, personally came and appeared before me James Madison Wells, the witness named in the annexed commission; that previous to his examination he was duly and properly sworn to declare the truth concerning the matters under

examination; that the interrogatories and X interrogatories in the annexed commission were propounded to him by me, and his answers thereto were taken down in writing by me as given and dictated by him, and that the same was read to him, and he signed the same in my presence on the day and in that behalf first stated.

In testimony whereof I hereto set my hand and seal officially this the 10th day of March, 1884.

[SEAL.] (Signed) L. V. MARYE,
Notary Public.

1542 *Testimony of James McConnell on Behalf of the State National Bank. Filed 30th Dec.*, 1884.

Mrs. MARIE P. EVANS *et al.*
vs.
DAVID URQUHART *et als.* } No. 7672.

Testimony resumed on behalf of The State National Bank, one of said defendants, before F. A. Woolfley, special examiner, this 15th day of December, 1884, subject to all legal objections.

Present: James McConnell, Esq., solicitor for The State National Bank, a defendant; A. H. Leonard, Esq., solicitor for complainant.

On behalf of The State National Bank, defendant, Mr. McConnell offers in evidence the record No. 248, being the entire mortuary proceedings in the succession of Stephen Duncan Linton in the probate court of the parish Rapides.

Also offers in evidence on behalf of State National Bank the deposition of Nemours Bienvenu, to be found in the printed certified record already in evidence, at page 123, referred to by Mrs. Evans in her deposition, said testimony being offered solely to contradict the evidence of Mrs. Evans on that point.

Also offers in evidence, *ex necessitate*, the testimony of J. Madison Wells, taken under commission by the complainant in
1543 this case on the 10th March, 1884, but restricts said offer solely to the purpose of proving out of what court this process issued under which Wells says he was keeper or custodian of the Quantico plantation.

Complainant objects to the offer of any part of testimony unless the whole is offered.

JAMES MCCONNELL, a witness sworn and examined for The State National Bank, defendant, says:

I have been counsel in this case for the State National Bank since the filing of the first bill of complaint, in 1867, continuously. To all the successive counsel that have appeared for the complainant, Mrs. Evans, I have extended invitations to go to the State National Bank building and there examine its books at their leisure with he view of seeing these books and learning for themselves whether here was anything shown by the books belonging to Mrs. Evans

or coming from the Quantico plantation or otherwise had ever been received by the bank, and my friend, Judge Leonard, is the only gentlemen of the counsel of record that has been to the bank to make the examination in question. No other counsel has
1544 ever done so.

The defendant, The State National Bank, here closes its testimony.

UNITED STATES OF AMERICA,
Eastern District of Louisiana, } *ss:*

I, F. A. Woolfley, special examiner, duly appointed by the court aforesaid to take the deposition of James McConnell, a witness on behalf of The State National Bank, one of the defendants in the foregoing entitled and numbered cause, do hereby certify that on the day named in the preceding deposition, I was attended by said witness and counsel that the said witness was duly sworn and examined and his deposition was reduced to writing, and that his signature to the same was waived by consent of said counsel.

I further certify that the record No. 248 of the probate court of the parish of Rapides, succession of Stephen Duncan Linton, the deposition of Nemours Bienvenu, and the testimony of J. Madison Wells (*ex necessitate*) were introduced in evidence during the taking of said deposition.

New Orleans, Dec. 30th, 1884.

(Signed) F. A. WOOLFLEY,
Special Examiner.

1545 *Copy of Letter Marked Complainant No. 1, Referred to by Mrs. Marie P. Evans on Cross-Examination and Offered in Evidence by the State National Bank February 25th, 1882.*

NEW ORLEANS, *Sept. 7th,* 1866.

To the stockholders of the Louisiana State Bank.

GENTLEMEN: In behalf of my husband, Mr. S. Duncan Linton, who is ill, and whose curatrix I have been appointed by the tribunal of France, I herein make a proposition relative to the Quantico plantation, on which you hold eight mortgage notes, and, taking into consideration the ruined condition of our country, I trust you will be generous in your conclusions, as I shall be conscientious in mine.

If the bank agree to take 50 per cent. on the face of these notes, making the whole debt about $40,000, I will assume the payment thus:

First. By organizing the labor, which I control completely.

Secondly. By paying nothing the first year, inasmuch as the buildings are destroyed and the wreck of the place is such as to require all I could make the first year to put the place in a responsible condition for this debt.

Thirdly. I agree and bind myself to annually — the sum of $5,000

until the debt is paid, with such interest as the bank may deem just.

1546 Fourthly. That the bank purchase the place and bind herself to return it to my possession as soon as I pay the debt.

Fifthly. That the bank seize the plantation immediately, thereby securing the present growing crops, and that she bind herself to turn over to me the proceeds of said crops; otherwise I have not the means to touch the place at all.

Hoping this proposition may meet your approbation, gentlemen, I am, most respectfully,

(Signed) MARY PERKINS EVANS.

I certify the foregoing to be a true and correct copy of the original.

(Signed) F. A. WOOLFLEY, *Examiner.*

1547 EXHIBIT B. F. JONAS No. 1. Referred to by B. F. Jonas in his deposition and offered in evidence on behalf of the State National Bank, 28th November, 1881.

Fourth District Court. J. R.

DAVID URQUHART
vs.
STEPHEN DUNCAN LINTON, 142 Royal St. } No. 14665.

Petition for executory process. J. K. Elgee and C. de Choiseul, att'ys.
Filed March 15th, 1861. (Signed) G. Lunimais, d'y cl'k.

To the honorable the judge of the fourth district court in and for the city of New Orleans:

The petition of David Urquhart, a citizen of the city of New Orleans, respectfully sheweth that Stephen Duncan Linton, formerly a resident of the parish of East Baton Rouge, but now domiciliated in the city of New Orleans, justly owes him thirty-two thousand five hundred dollars, with eight per cent. per annum interest on one-

1548 third of said sum from the 13th of January, A. D. 1861, until paid, and like interest on one other third from the 13th of February, A. D. 1861, until paid, and like interest on the remaining third of said sum from the 13th of March, 1861, until paid, besides ten $\frac{5\,0}{1\,0\,0}$ dollars costs of protest and the costs of these proceedings, in which are to be included five per cent. upon the amount herein sued for, being attorneys' fees or commission for instituting these proceedings.

Petitioner represents that the said indebtedness is evidenced by three promissory notes, each one for ten thousand eight hundred and thirty-three $33\frac{1}{3}$-100 dollars, drawn by the said Stephen Duncan Linton to his own order and endorsed in blank by himself, which, with the protests, are herewith filed for reference, the same being a portion of twelve promissory notes executed on the 27th day of December, in the year 1859, by the said Stephen Duncan

Linton to and in favor of W. and D. Urquhart, each one being for a like sum and forming an aggregate of one hundred and thirty thousand dollars.

Petitioner represents that when the said Linton executed the said notes he, at same time, to wit, on the day of the date thereof, did, by public act passed before Theodore Guyol, a notary public,
1549 execute also a special mortgage to secure the payment of same, principal, interest, and costs, upon a certain cotton plantation, known by the name of the "Quantico plantation," situated in the parish of Rapides and State of Louisiana, and also upon one hundred and ninety-five slaves attached to said plantation, with their increase, and also upon all of the personal property attached to said plantation; and petitioner represents that the said Linton did therein bind and obligate himself, in case it should become necessary to institute legal proceedings for the recovery of the amount of the said notes or any part thereof, to pay the fees of the attorney-at-law who should be employed for that purpose, and which fees were therein fixed at five per cent. upon the amount sued for; and he further represents that the payment of the said fees are secured by the mortgage aforesaid; and petitioner further represents that the said mortgage was executed not alone in favor of the commercial firm of W. and D. Urquhart, the original mortgagees, but the said Linton did in said instrument expressly agree that the benefits of the said mortgage should enure to the use and benefit of any and all future holder or holders of the said
1550 promissory notes.

And petitioner further represents that the said Linton did therein also agree and stipulate that all proceedings upon the said mortgage for the recovery of the amount of the said notes or any of them might be instituted and had before any of the district courts of New Orleans, all of which can be more fully seen by reference to said act of mortgage, copy of which is herewith filed for reference and annexed hereto.

The premises considered, petitioner prays your honor to grant him an order of seizure and sale, to be addressed to the sheriff of the parish of Rapides, directing him to sell, according to law, the property set forth in the act of mortgage aforesaid upon the terms following: for so much cash as will pay and satisfy the three notes held by petitioner and filed herewith, amounting to thirty-two thousand five hundred dollars, besides interest, costs of protest, costs of suit, and five per cent. commission as attorney's fees, and upon such terms of credit as will correspond with the maturities of the remaining notes set forth in the act of mortgage aforesaid; and petitioner prays for general relief in the premises.

(Signed) J. M. ELGEE,
Att'y-at-Law for Petit'r.

1551 *Order.*

Let an order of seizure and sale issue as prayed for, and let the mortgage property set forth in the act of mortgage on file in this cause, to wit, the act executed 27 December, 1859, by Stephen Dun-

can Linton to and in favor of W. and D. Urquhart, be sold, according to law, for so much cash as will pay and satisfy the seizing creditors' demand, principal, interest, and all costs, including five per cent. commission on the amount sued for as attorney's fees, and upon such terms of credit as will correspond with the falling due of the remaining nine notes set forth and described in the act of mortgage aforesaid, and let the defendant have due notice hereof.

Done and signed at chambers on this 15th day of March, A. D. 1861.

(Signed) JOHN W. BRICE, *Judge.*

No. 14665.

4th District Court.

Note. Filed March 15th, 1861. (*Signed*) *G. Luminait, D'y Cl'k.*

Mr. De Choiseul will please obtain the necessary order from the judge and then file with the clerk the papers. He will be so
1552 good as to direct two copies of the petition and order thereon to be made out, after which the sheriff will serve one upon Mr. Linton and make his return upon the other, but the one having the return upon it is to be given to me, so that I can exhibit it to the sheriff of Rapides as evidence that due and legal notice has been given prior to the issuance of the writ.

Ask the sheriff to make the service as soon as possible.

(Signed) ELGEE.

New Orleans, 15th March, 1861.

Supplemental Petition for Order of Seizure & Sale. Filed Oct. 6th, 1865. (*Signed*) *E. O'Sullivan, D'y Cl'k.*

4th District Court.

DAVID URQUHART
vs.
S. DUNCAN LINTON. } No. 14665.

To the Honorable Paul E. Theard, judge of the fourth district court:

The supplemental petition of David Urquhart, plaintiff herein, shews with respect—

That (as will appear by the record of this suit) he applied for and obtained on the 15th day of March, 1861, an order of seizure
1553 and sale herein, directed to the sheriff of the parish of Rapides, in this State, ordering him to seize and sell the property set forth in the act of mortgage on file in this cause, to wit, the act executed December 27th, 1859, by Stephen Duncan Linton to and in favor of W. and D. Urquhart for so much cash as would pay and satisfy the seizing creditors' demand, principal, interest, and all costs, including five per cent. commissions on the amount sued for as attorney's fees, &c., all which will more fully appear by reference to

the said order, granted on the said day by the Hon. John W. Brice, then judge of this court, and which forms part of the record of this suit.

Your petitioner avers that under the said order the said mortgaged property was seized and advertised according to law, but was never sold, the sale having been suspended by the stay law passed by the then Legislature of this State.

Your petitioner further shews that while said order was suspended in the hands of the sheriff of the parish of Rapides the court-house was destroyed by fire, with all the records both of the sheriff and clerk of said parish, including the said order of seizure and
1554 sale, thereby rendering it impossible for the sheriff either to execute or make return upon the same.

Your petitioner further shews that since the issuance of the first order the slaves included in the said mortgage were illegally removed by the said Stephen Duncan Linton, but have now become freedmen and are not subject to the claims of petitioner; and your petitioner also shews that the said Stephen Duncan Linton has abandoned his domicile in this city and is now absent from the country and residing in the Empire of France, and is not represented in the State.

Wherefore, the premises considered, petitioner respectfully prays that a *curator ad hoc* be appointed to represent the said absentee, Stephen Duncan Linton, and that your honor grant an *alias* order of seizure and sale, to be addressed to the sheriff of the parish of Rapides, directing him to sell according to law, and after due notice and advertisement, the said mortgage property (excepting the slaves), to wit, a certain plantation known by the name of the Quan-
1555 tico plantation, situate in the parish of Rapides, in this State, on the east side of Bayou Boeuf, and containing about eighteen hundred acres, the said plantation lying at the mouth of Bayou Robert, about twelve miles from the town of Alexandria, and being bounded on the upper side by the lands of Chambers and on the lower side by L'Esperanza plantation of the late John Linton, deceased, together with the buildings and improvements thereon, the engines, machinery, and apparatus, stock, cattle, horses, mules, farming utensils, and implements of husbandry on the said plantation, for cash, to satisfy the three notes held by petitioner and filed herein, amounting to thirty-two thousand five hundred dollars, besides interest as prayed for, costs of protest, costs of suit, and five per cent. upon the amount sued for as attorney's fees, and also to satisfy the remaining notes set forth in said mortgage and which are held by different parties; and petitioner further prays that said Stephen D. Linton, by and through the said *curator ad hoc*, be served with copies of the original and this supplemental petition and all
1556 notices required by law; and petitioner prays for all general relief in the premises.

(Signed) HYAMS & JONAS,
Att'ys for Petitioner.

Let this supplemental petition be filed herein.

(Signed) PAUL E. THEARD, *Judge.*

Order.

Let J. G. White, Esq., of Alexandria, La., be appointed *curator ad hoc* to represent the absent defendant, and let executory process issue, directed to the sheriff of the parish of Rapides, as herein prayed for and according to law.

(Signed) PAUL E. THEARD, *Judge.*

New Orleans, October 6th, 1865.

Writ of Seizure & Sale. Hyams & Jonas, Att'ys.

Fourth District Court of New Orleans.

DAVID URQUHART
vs.
STEPHEN DUNCAN LINTON. } No. 14665.

The State of Louisiana to the sheriff of the parish of Rapides, Greeting:

1557 You are hereby commanded, in the name of the State of Louisiana and of the fourth district court of New Orleans, to seize and sell, according to law, the following-described property, to wit: "A certain plantation, known by the name of the 'Quantico plantation,' situate in the parish of Rapides, in this State, on the east side of Bayou Boeuf, and containing about eighteen hundred acres, the said plantation lying at the mouth of Bayou Robert, about twelve miles from the town of Alexandria, and being bounded on the upper side by the lands of Chambers and on the lower side by the L'Esperanza plantation of the late John Linton, deceased, together with the buildings and improvements thereon, the engines, machinery, and apparatus, stock, cattle, horses, mules, farming utensils, and implements of husbandry on the said plantation," to pay and satisfy, in cash, the plaintiff's claim, amounting to thirty-two thousand five hundred dollars, with eight per cent. interest (per annum) on one-third of said sum from the 13th of January, A. D. 1861, like interest on the other third from 13th February, 1861, and like interest on the
1558 remaining third from the 13th March, 1861, until paid; also ten $\frac{50}{100}$ dollars, costs of protest, five per cent. on the amount claimed and sued for as attorneys' fees and the costs of these proceedings, and also to pay and satisfy nine other notes amounting to ten thousand eight hundred and thirty-three dollars thirty-three and one-third cents each, and which are held by different parties and more particularly set forth and described in a certain act of mortgage passed before T. Guyol, notary public, on the 27th December, 1859, the plaintiff being the holder and owner of three certain promissory notes, each one for ten thousand eight hundred and thirty-three $33\frac{1}{3}$-100 dollars, drawn by the said Stephen Duncan Linton to his own order and endorsed in blank by himself, the same being a portion of twelve promissory notes executed on the 27th day of December, 1859, by the said Stephen Duncan Linton to and in favor of W. and D. Urquhart, the remaining nine of said twelve promissory

notes being described above; all of which notes form an aggregate amount of one hundred and thirty thousand dollars, and bearing special mortgage on the property above described.

1559 *Continuance.*

Extract from the Minutes, April Term, 1885.

MARIE P. EVANS *et als.*
vs.
STATE NATIONAL BANK *et als.* } 7672.

MAY 27TH, 1885.

This cause, as continued from yesterday, came on this day to be further heard and was further argued by the counsel for the parties respectively, and was continued for further hearing until to-morrow morning at 11 o'clock.

1560 Extract from the Minutes, April Term, 1885.

MARIE P. EVANS *et als.*
vs.
STATE NATIONAL BANK *et als.* } 7672.

MAY 28TH, 1885.

This cause, as continued from yesterday, was this day resumed, and after being further argued by the counsel for the parties, respectively, was continued until to-morrow morning at 11 o'clock.

1561 Extract from the Minutes, April Term, 1885.

MARIE P. EVANS *et als.*
vs.
STATE NATIONAL BANK *et al.* } 7672.

MAY 29TH, 1885.

This cause, as continued from yesterday, came on this day to be further heard and was further argued by the counsel for the parties respectively and submitted, and the court took time to consider.

1562 *Decree. Filed 19th June,* 1885.

Circuit Court of the United States, Fifth Circuit, Eastern District of Louisiana.

MARIE P. EVANS *et al.*
vs.
STATE NATIONAL BANK *et al.* } No. 7672.

This cause came on to be heard on the original bill, supplemental bills, answers, replications, exhibits, evidence, and motions to suppress testimony, and was argued; whereupon, the court being advised in the premises, and for the reasons given in the written opinion herewith filed—

It is now ordered, adjudged, and decreed that there be judgment against the complainants and in favor of the defendant, The State National Bank of New Orleans, formerly the Louisiana State Bank, dismissing the bill and supplemental and amended bills as to said defendant, the said State National Bank, with costs to be paid by the complainants, and that said defendant bank recover their costs to be taxed.

June 19th, 1885.

(Signed) DON A. PARDEE, *Judge.*

1563 *Motion for Rehearing, with Affidavit of J. M. Wells Annexed. Filed July 2, 1885.*

United States Circuit Court for the Eastern District of Louisiana.

MARIE P. EVANS & HUSBAND
vs.
STATE NATIONAL BANK *et als.* } No. 7672.

To the honorable the judge of said court:

The petition of Marie P. Evans and her husband, William R. Evans, complainants, respectfully represents—

That they desire and humbly pray for a rehearing in this cause for, among other, the reasons—

1st. That this honorable court erred in not giving due credence and effect to the testimony of witnesses offered on complainants' behalf, and especially that of the witnesses Widow William Morris, Jackson Johnson, John Clements, A. V. Ward, H. Hall, and J. E. Zuntz; that their character for truth and veracity has in no manner been impeached, and their statements did not extend beyond what they know from their personal knowledge.

2nd. That since the rendition of the decree in this cause J. Madison Wells, by his voluntary sworn statement hereto annexed, among other things, corrects *as* an error which he made in giving his testimony taken under commission and offered in evidence on behalf
1564 of the defendant, The State National Bank, as regards the writs under which he was appointed keeper, and giving his reasons showing how said error in his said previous testimony occur-ed, and his testimony so corrected, instead of conflicting, fully agrees with and therefore corroborates in that regard the testimony of said Mrs. Morris, John Clements, and Jackson Johnson. Said voluntary sworn statement of said Wells shows that the shipment of cotton in 1864 for benefit of the La. State Bank *and* was made by him as keeper of cotton from the Quantico plantation while in his possession as said keeper under writ of sequestration issued by the district court for the parish of Rapides in the two suits of D. Urquhart and Louisiana State Bank against S. D. Linton, and that the proceeds of said cotton was received by Mr. Lapeyre, who, by testimony in the record, is shown to have been at the time president of said bank; that the recognition of his error in his said previous testimony by said Wells

become known to complainants only since the rendition of the decree in this cause on the 20th June, 1885.

1565 That during the time of taking of complainants' testimony in this cause they understood and believed that Neill, the former sheriff of the parish of Rapides, was dead, and that only since the decree in this cause have they been informed that said Neill is alive, residing in said parish of Rapides; that in the nature of things the testimony of said Neill is important in determining issues involved in this cause; that by his said testimony complainants sincerely believe it will be shown that in the proceedings under executory process issued out of the then 4th district court for the parish of Orleans, in 1861, in favor of D. Urquhart against Stephen D. Linton, possession of the Quantico plantation did not remain under seizure, if any seizure was made, but a short time, and that said plantation and cotton raised thereon was in the possession of said Linton until said sheriff's departure from the said parish of Rapides to enter the Confederate service, and that during any such seizure under said executory process said J. Madison Wells was not appointed keeper.

1566 That since learning that said Neill is living complainants have taken means to obtain his affidavit as to his official action under said executory proceedings and expect to receive the same by the 4th or 5th inst. to file as part of this application; that complainants expect and believe that they can obtain the testimony of said Neill and said Wells to the effect herein stated within a reasonable time if a rehearing be granted herein.

(Signed) A. H. LEONARD,
Solicitor for Complainants.
" MARIE P. EVANS.
WM. R. EVANS.

And now William R. Evans and Marie P. Evans, his wife, complainants, being first duly sworn, say that the statements in the foregoing second, third, and fourth grounds for rehearing are true to the best of their knowledge, and that this affidavit is not made for delay, but to obtain justice and equity.

(Signed) MARIE P. EVANS.
" WM. R. EVANS.

Sworn to and subscribed before me this 2d July, A. D. 1885.
(Signed) E. R. HUNT,
U. S. Commissioner.

1567 STATE OF LOUISIANA, }
Rapides Parish. }

Personally came and appeared before me JAMES MADISON WELLS, who, first being duly sworn, deposes and says:

I reside in this parish; my occupation is that of a planter; my age is 77 years. I am and have been partially blind for 3 years; in fact, so blind it is impossible for me either to write or read.

After hearing read the decision of Judge Pardee in the case of

Mrs. Marie P. Evans *vs.* State National Bank *et als.* I wish to make a voluntary statement involved in the case:

First. Some time in March, 1861, the Quantico property and slaves were advertised for sale under a foreclosure eminating from the 4th dist. court of New Orleans. Under that writ the property was not sold, and Mr. Linton remained in possession of his property. In May or June, 1863, after the Federal raid, Mr. Linton, accompanied by his wife, being on his way to Texas, stopped his carriage in front of my gate (my plantation adjoining the Quantico place), and, bidding me good-bye, handed me a family gun, an old relic, to
1568 keep for him, and especially charged me to overlook everything on the place as a friend & my —, which I did.

2nd. I was appointed keeper of the cotton on the Quantico plantation some time in August, 1863. Neill, the sheriff, being absent in the Confederate army, Judge John Clements, who was at that time acting deputy sheriff, came at the time above mentioned with two writs of sequestration, under which he seized all of the cotton of the Quantico plantation, upward of some 1,800 bales.

Those two writs of sequestration eminated from the courts of this parish. One of the writs was The La. State Bank *vs.* Linton & the other was D. Urquhart *vs.* Linton. At the time above mentioned Mr. Clements sent for me and handed me a letter from J. K. Elgee, who was att'y for the bank and Urquhart, requesting me to take charge as custodian of all the cotton and everything on the place, which I did, being then and there appointed keeper by Judge Clements, the deputy sheriff, who left me in charge as such at that time.

1569 After my appointment of keeper of said cotton I became lieutenant governor of Louisiana.

In 1864, at the time of the raid of General Banks to Alexandria and above, Henry Perkins was at my house during the raid and left for New Orleans a day or two after. He requested me to ship the cotton to N. O. for account of the La. State Bank, and begged me to charter the railroad for that purpose, which I did, as there were no trains here at that time to convey the cotton from the plantation to the river. The proceeds of the cotton was received by Mr. Lapeyre.

With regard to the 65 bales brought to New Orleans in 1865, Mr. Urquhart had it seized by the sheriff, and as I had not yet been discharged as keeper I contended I had an interest in it. In order to get possession of that cotton it became necessary to revive the suit entitled D. Urquhart *vs.* Linton, of 1861, of the 4th district
1570 court of New Orleans. A part purporting to be a true copy of the original return of the sheriff's writs issued in 1861 was then filed to affect the seizure of the 65 bales of cotton. The 65 bales of cotton were sold by Burbridge & Miller, Government cotton agents. I informed Mr. Lapeyre of the sale of this cotton and by whom it was sold. Mr. Lapeyre said he would repair to the house of these merchants and investigate the matter. A day or two after Mr. Urquhart said that the money had been paid over to Mr. Laypere.

When the interrogatories — propounded by complainants in this suit a year or so ago I — suffering from illness and confounded the suits of 1861 & 1863, omitting the latter under which I was appointed.

(Signed) J. MADISON his x mark. WELLS.

Witness:
(Signed) JEFF. S. WELLS.

Sworn to — subscribed before me this 27th day of June, A. D. 1885.

— —.

STATE OF LOUISIANA, *Parish of Rapides.*

1571 Personally came and appeared before the undersigned, justice of the peace in and for the parish and State aforesaid, J. Madison Wells, resident of this parish & State, who, being by me duly sworn, declares that the foregoing statement is the truth, the whole truth, and nothing but the truth. He being blind, he, after hearing the above read before me, affixes his mark.

In testimony whereof I hereunto set my hand on this 27th day of June, 1885.

(Signed) CRAW. MORGAN,
Justice of the Peace.

Order on Motion.

Rehearing refused.
July 4th, 1885.
(Signed) DON A. PARDEE, *Judge.*

1572 *Rehearing Refused.*

Extract from the Minutes, April Term, 1885.

MARIE P. EVANS *et als.* *vs.* STATE NATIONAL BANK *et als.* } 7672.

JULY 6TH, 1885.

Motion for rehearing, with affidavit of Wells annexed. Rehearing refused.

(Signed) DON A. PARDEE, *Judge.*

1573 *Reasons for Decree. Filed 19th June,* 1885.

Circuit Court of the United States, Fifth Circuit.

MARIE P. EVANS *et al.* *versus* STATE NATIONAL BANK. } No. 7672. Reasons for Decree.

The facts as claimed by complainant are as follows:
On December 27th, 1859, S. D. Linton, a very wealthy planter,

executed a mortgage on a valuable plantation, situated in the parish of Rapides, known as the Quantico plantation, and on the improvements thereon, and the stock, cattle, horses, mules, farming utensils, implements of husbandry, and 195 slaves thereto attached, to secure a debt of $130,000.00 which he owed his commission merchants, W. & D. Urquhart, of New Orleans, evidenced by twelve notes, each for $10,833.33⅓, drawn to his own order and by him endorsed, maturing January, 10–13, February 10–13, March 10–13, and March 15–18, of years 1861, '2, '3. A few days after the Louisiana State Bank—now the State National Bank—discounted three of said notes, viz., those maturing February 10–13, March 10–13, and March 15–18, A. D. 1862, and received four of said notes, viz., those maturing January 10–13, 1862, February 10–13, March 10–13, and March 15–18, 1863, as collateral to secure payment of note given by W. & D. Urquhart to the bank for money borrowed equal to the face amount of the notes pledged. The ability of Linton to provide for his notes
1574 was not questioned by himself or those who held them. They would doubtless have been met when due, but shortly before the notes first falling due matured the country was precipitated into a revolution. Louisiana seceded, joined other States in creating the Southern Confederacy, and marshalled all her resources to meet the shock of rapidly approaching war. The State became a military camp. Her people were wild with excitement. The ordinary affairs of life were ignored or neglected, and confusion reigned.

In view of probable contingencies Linton (as he stated under oath) effected an arrangement by which the notes falling due in 1861 were extended one year.

Such being the situation on March 15, 1861, W. & D. Urquhart who, for some cause, real or fancied or feigned, considered or affected to consider themselves in some manner aggrieved by Linton, instituted in the 4th district court of Orleans parish a suit against him for $3,108.00, based on an open account and on commissions alleged to be due on cotton which they claimed should have been shipped to them by Linton.

On the same day and in the same court David Urquhart, one of the firm of W. & D. Urquhart, instituted cause No. 14665, entitled David Urquhart *vs.* S. D. Linton, a suit for executory process. In the petition, signed by J. K. Elgee, attorney, it is alleged that Linton is indebted to Urquhart in the sum of $32,500, with interest, for three of the notes hereinbefore mentioned, viz., those ma-
1575 turing respectively January 13th, February 13th, and March 13th, 1861. The mortgage executed by Linton is made part of the petition, and an order of seizure and sale prayed for. On the same day an order of seizure and sale was granted, directing the sheriff of Rapides parish to seize and sell the property mortgaged, for cash, to satisfy amount sued for, "and on such terms of credit as will correspond with the falling due of the remaining nine notes set forth and described in the act of mortgage aforesaid."

A writ of seizure and sale issued in said cause No. 14665, directed to the sheriff of Rapides parish, under which that officer advertised the mortgaged property for sale on the first Saturday in May, 1861.

This writ does not appear in the transcript; it was neither executed nor returned, and was destroyed with all other papers of the sheriff's office when the court-house of Rapides parish was burned by the Federal army, in 1864. The sheriff made a mere paper seizure, if any. He certainly did not take actual possession of the property mortgaged; it remained in Linton's possession and was managed and controlled by him, through his overseers and agents, until August, 1863.

The execution of this writ was enjoined by Linton, who on April 20th, 1861, instituted in fourth district court of Orleans parish suit No. 14846, entitled S. D. Linton *vs.* D. Urquhart. In his pe-
1576 tition Linton alleged that by agreement between himself and Urquhart the time for payment of all the notes which on their face matured in 1861, including those sued on by Urquhart, had been extended one year.

On Linton's affidavit to that effect, and in accordance with the prayer of his petition, an injunction was granted by the judge of the fourth district court against D. Urquhart and the sheriff of Rapides parish, ordering them to suspend the sale of said mortgaged property under the said writ of seizure and sale issued in the suit of D. Urquhart *vs.* S. D. Linton, No. 14665, until the final hearing and decision of the suit instituted by Linton *vs.* Urquhart.

On this order writs of injunction issued to David Urquhart and to the sheriff of Rapides. No further action has since been taken in said cause.

In April, 1862, the Federals captured New Orleans, and in a short time thereafter occupied and held until the close of the war a considerable portion of Southern Louisiana. Meanwhile their fleet ascended the Mississippi river and the Red River, and some time in spring of 1863 held Alexandria, on Red River, in Rapides parish, for a few days, the Confederate forces resuming possession when the gunboats withdrew, and from that time until the Banks expedition arrived in Rapides, in the spring of 1864, the Confederate army held the parish, and the Confederate Government was par-
1577 amount therein.

It was evident, however, that the Federals could occupy Alexandria or any other place on a river navigable by their gunboats whenever they desired so to do, and this fact was well known by the parties through whose combined action Linton was despoiled of his property.

In the month of April or May, 1863, Linton, accompanied by his wife, went to the Quantico plantation. It was then in his possession and under his exclusive control. He placed an overseer or manager in charge of the place, employed an engineer, there being a steam-gin on the plantation, and, remaining only a short time, went to Texas, and from there to Cuba, and from there, in the fall of 1863, to Europe, where he remained until after the close of the war.

On the 21st day of August, A. D. 1863, J. K. Elgee, the same attorney who represented Urquhart and Cohen in their suits against Linton, instituted in the parish of Rapides two other suits against

Linton, one in the name of Urquhart and one for the Louisiana State Bank, in which suit two writs were issued by the clerk of the district court of Rapides, and by that officer placed in the hands of
the deputy sheriff of the parish, John Clements, then in full
1578 and sole charge of sheriff's office, the sheriff being absent in
the Confederate army. Under these writs and acting under written instructions given by J. K. Elgee, attorney of the plaintiffs in said suits, Clements seized some 1,800 bales of cotton (or rather cotton amounting to some 1,800 bales, only a portion of it being baled at the time), the property of S. D. Linton and then on the Quantico plantation, served notice of seizure on Wm. Morris, who had been left in charge of the plantation when Linton went to Europe, and, still acting under Elgee's written instructions, appointed J. Madison Wells keeper of the property so seized and put him (Wells) in possession of same.

These suits, writs, instructions of Elgee, attorney, and sheriff's returns, showing seizure, were all destroyed with the court-house of Rapides parish when that building was burned, in 1864.

Some months after Wells had been put in possession of Linton's cotton he left Rapides parish and came to New Orleans, where he remained some time; became a candidate for the office of lieutenant governor of Louisiana at an election held under Federal auspices in February, 1864, and was elected. Meanwhile General Banks was
moving northward on his Red River expedition, and Wells
1579 returned to Rapides with him. The expedition continued on
to Mansfield. On his return Wells chartered a railroad, which ran from Alexandria through the Quantico plantation to Lecompte, and by means of this railroad removed to Alexandria all of the cotton which he held as keeper. The Federal forces were repulsed at Mansfield and retreated, making, however, a stand at Alexandria for several days. During their stay Wells managed to ship on Government transports which accompanied the Banks expedition the cotton which he had brought into Alexandria from the Quantico plantation. A portion of same, about one thousand bales, was carried to New Orleans, and the balance, about eight hundred bales, was taken up the Mississippi river to some point in Illinois. The cotton which arrived at New Orleans was consigned to and received by C. A. Weed & Co., who sold same and paid to Wells nett proceeds thereof, some $340,000. The evidence gives no further account of the cotton, worth at that time at least $300,000, which went up the Mississippi river.

Linton, absent in Europe, had no knowledge of the seizure made in 1863 or of the removal of his cotton, and died ignorant of the facts.

In 1866 he was interdicted by one of the courts of Paris,
1580 France, where he then resided, and soon thereafter, to wit, in
the early part of the year 1867, died. Meanwhile, after the close of the war and some time in the fall or winter of 1865, Linton, with his wife, came back to Louisiana, remaining in New Orleans some months. Linton's mental condition, however, prevented him from learning the true condition of his affairs, and his wife, reared

in luxury, was absolutely without any experience in matters of business. They returned to Paris some time in the year 1866 no wiser than when they left there. Linton died in Europe, as stated. His widow remained there until the winter of 1869–'70, when she returned to this country, where she has since lived. Some time after her return she was informed of the facts hereinbefore stated, and thereupon commenced a struggle against desperate odds to compel the spoliators to account for the property which they had wrongfully taken.

Before proceeding further it may be well to state—

1. That the Louisiana State Bank was some time since changed into a national bank, and is now known as the "State National Bank." It is conceded that the State National Bank succeeded to all the rights and is liable for all obligations of the Louisiana State Bank. For convenience it will be referred to as the bank.

1581 2. The succession of Linton is now represented by the complainant, Marie P. Evans, his widow, executrix of his last will, in which she is constituted his sole universal legatee.

The State National Bank, the only contesting defendant, in a lengthy answer responsive to the bill and amended and supplemental bills, denies all participation in and responsibility for any and all acts charged by the complainants, so far as any liability is sought to be attached to the bank.

From the evidence in the case I find—

I. The seizure of the Quantico plantation in the suit of Urquhart *vs.* Linton, No. 14665 of the docket of the fourth district court of New Orleans, was an actual seizure, and thereunder J. M. Wells was appointed keeper, and as such keeper had possession.

This appears by the averments of complainants' bill, by the record of the case No. 14665, by the judicial allegations and admissions of Linton in his suit, No. 14846 of the same court, for an injunction, by the testimony of Wells, who swears he was appointed keeper under the process which issued from the fourth district court of New Orleans, and by the testimony of the complainant herself,

1582 who swears that in the early spring of 1863 she was herself on the plantation, and that the property was then in the possession of Gov. Wells, who was living on the place in possession and charge.

II. It is not satisfactorily shown that any suit was entered by the Louisiana State Bank against Linton in 1863, nor that any seizure of Linton's property was made in that year on behalf of the bank; neither the original bill in this case nor any of the supplemental or amended bills allege any such suit and seizure, the only allegation on the subject being "that during the time of such occupation by said David Urquhart and on or about the twenty-first of August, A. D. 1863, the defendant, The State National Bank of the City of New Orleans, then known as the Louisiana State Bank, joined with the said defendant, David Urquhart, in the possession and occupancy of the said above mentioned and described piece or parcel of land and continued in such possession and occupancy until on or about the — day of January, A. D. 1869."

Such suit and seizure were very unlikely proceedings to be had at that time. The State bank was in the hands of legal liqui-
1583 dators appointed by the general commanding the U. S. forces in Louisiana. The parish of Rapides was at best debatable ground, with none but a Confederate court and officers, and whether such a suit was instituted in Rapides or Orleans parish it is not likely that a seizure could have been made in Rapides except, perhaps, in the latter case during the short time the Federal troops occupied the parish in 1863, and any such seizure would have been vain and illusory.

The main witness on this point, Clements, who testifies that he was the deputy sheriff that made the seizure, says the suit was instituted in Rapides and was during the Federal raid of 1863, which he says lasted about ten days, and that he then and there appointed Wells keeper.

The witnesses, Mrs. Morris and Jackson Johnson, whose testimony was taken 21 years after, are certain that Clements made the seizure at the suit of the bank on process from Rapides parish in August, 1863, and then and there appointed Wells keeper. Henry Perkins, uncle of complainant and to some extent agent for Linton, swears that he was on the place in September or October, 1863; that Wells was in charge as keeper; that he saw his authority, and it was signed by Neal, the sheriff.

1584 Wells swears that he was appointed under process from the fourth district court in New Orleans, and in this he is corroborated by the appointment, a copy of which is in record 14665, from said fourth district court. It is argued strenuously that as both complainant and defendant agree that in 1864 the court-house and records of Rapides parish were destroyed that the papers presented in 1865, in the fourth district court, purporting to be the original order of seizure and sale in No. 14665 and the appointment thereunder of Wells as keeper, were manufactured for the occasion. The high character of the attorneys appearing at that time in that case—one of whom (Senator Jonas) swears that he saw the original—forbids the court from such conclusion; and what more natural than that Gov. Wells, as keeper, should have in his possession his appointment as keeper. Henry Perkins, whom the complainant ought not to dispute, swears that Wells showed it to him in September or October, 1863.

It seems to me, from all the circumstances in proof, that Deputy Sheriff Clements, from lapse of time and confusion of seizures, is mistaken, and that the witnesses, Mrs. Morris and Jackson
1585 Johnson, are not entitled, under the circumstances, to much credit when they swear so positively as to the bank's being creditor in a suit between other parties 21 years before. The history of this case, as shown by the pleadings, strongly tends to show that their testimony was an afterthought or lucky find for the complainant if not to themselves.

III. The evidence does not show that the bank had any hand in the removal and conversion of cotton from the Quantico plantation at any time during or after the war—

Nor that any agents of the bank had anything to do with such removal and conversion. There is a great deal of hearsay evidence to the effect that Wells and the parties who assisted in bringing cotton out of Red River in 1864 and in selling and disposing of it said at time that "the bank had an interest;" "that the bank had a lien;" "that Wells said in removing cotton from Quantico he acted as agent of the bank;" "that Weed & Co. said it was cotton which had been seized by some bank," but there is no evidence to bring home to any agent of the bank anything to do with the re-
1586 moval and conversion of any cotton except that of V. A. Ward, secret-service officer, who says that he reported to Col. C. W. Kilbourne, provost marshal, that cotton was brought to New Orleans on Government transports attached to the Banks expedition, and that J. Madison Wells had some connection with it; that thereupon Col. Kilbourne sent him, Ward, for J. M. Lapeyre, who came to the provost marshal's office, and thereupon "the provost marshal asked him about this cotton that came down the river, supposing it to be John A. Stevenson's, who had a contract to bring in cotton which the Government had an interest in to a certain extent, and he said no, it was cotton that he had got a permit to bring in; it was Madison Wells' cotton, which the bank had a lien upon."

Col. Kilbourne, the provost marshal, testifies that he sent for Lapeyre, at the instance of Gen'l Bowen, and that the interview with Lapeyre was in the presence of Gen'l Banks, Gen'l Bowen, and himself, and that Lapeyre explained that it was not Stevenson cotton, but cotton purchased with money belonging to some other fund, and he says nothing of any claim on the part of the bank.

Now, Lapeyre had been president of the Louisiana State
1587 Bank, and was at that time one of the three military liquidators and a commissioner of the bank.

That he was engaged in cotton speculations and was interested with Wells and others in the cotton brought from Red River may be conceded, and still the case is far from showing that in such interest with Wells he, Lapeyre, represented the bank or pretended to do so. Nothing would be more natural, if Wells and others were engaged in spoliating the owners of cotton and bringing it in through the Union lines, than for them to answer that the bank had "an interest" or "a lien," well knowing that the bank was in the hands of a loyal commission under the protection of the general commanding, and that the bank held large mortgage interests on plantations and on "Quantico" in particular.

IV. The case shows that on June 11th, 1863, the commanding general of the Dep't of the Gulf, by special order No. 138, appointed Col. C. C. Dwight, A. Miltenberger, and J. M. Lapeyre commissioners to effect the liquidation of the Louisiana State Bank, and ordered that said commissioners enter upon the discharge of their duties immediately, and that, accordingly, on the 17th of
1588 June, over the protest of the president and board of directors of said bank, the said commissioners took possession of all the assets, affairs, and business of said bank, ousting the directors from all control, and that the affairs and control of the bank re-

mained in the hands of said commissioners and out of the control of its legal board of directors until Gen'l Canby restored the bank and its affairs to the directors and stockholders, in January, 1866.

This period, from June 17th, 1863, to 1866, covers the time of all operations complained of in the present case.

V. There is no evidence to show that any of the proceeds of the alleged spoliation and conversion of the "Quantico" cotton ever came to the hands of the bank or to the hands of any of its agents for the bank, while the sworn answer of the bank and the evidence of Samuel H. Kennedy, a director from before 1863 till now, and for many years president of the bank, and that of C. L. C. Dupuy, cashier, is positive that the bank received no part or parcel
1589 of such proceeds, and they are corroborated by the books and records of the bank covering its entire history.

The evidence in this case is very voluminous and relates to many matters I find no time nor necessity to review, for they throw no light upon the issues as I understand them.

It seems to me very clear that in order to hold the bank liable for the alleged conversion and spoliation it is necessary to find that either the bank, through its agents, participated in the conversion or received or benefitted by the proceeds of the conversion, in whole or in part.

Under the evidence in this case and the facts as I have found them, neither of these is shown, nor is there, under the evidence, a well-founded suspicion that the bank was guilty of either.

Whatever figure the agents of the bank cut in the whole matter (and we have proof only of the single declaration of Lapeyre, military commissioner, as testified to by Ward) would not, in my judgment, bind the band even if it had been in the control of its own agents; but when it is considered that at that time the bank
1590 was in the possession and under the control of the military authorities and not under the control of its directors and stockholders, it would seem preposterous to hold the bank responsible for torts and wrongs with which the stockholders and directors had nothing to do, and that, too, on flimsy hearsay evidence only supported by Ward, who is directly contradicted by Kilbourne.

That the wrongs were committed by the military liquidators and that the bank ratified by its stockholders resuming control is an assumption without proof and a conclusion that does not follow.

A decree will be entered dismissing the bill and amended and supplemental bills as to the State National Bank with costs.

1591 *Motion for Appeal.*

Extract from the Minutes, April Term, 1885.

MARIE P. EVANS & HUSBAND
vs. } 7672.
STATE NATIONAL BANK *et als.*

JULY 8TH, 1885.

On motion of A. H. Leonard, solicitor for complainants, and on

suggestion to the court that they feel aggrieved by the judgment and decree rendered and signed by said honorable court in this cause at said term in favor of the defendant, The State National Bank, and against said complainants; that complainants are informed there is error in said judgment to their prejudice; that the amount in controversy and dispute in said cause exceeds $5,000, exclusive of interests & costs, and that they desire to appeal from said final decree, it is ordered that complainants be allowed and granted an appeal from said final decree rendered in this cause to the Supreme Court of the United States, returnable on the second Monday of October, A. D. 1885, and according to law, upon said complainants giving bond with security in the sum of $500, conditioned according to law.

1592 MARIE P. EVANS *et als.* *vs.* STATE NATIONAL BANK *et als.* } No. 7672.

Appeal Bond. Filed July 8th, 1885.

UNITED STATES OF AMERICA:

Know all men by these presents that we, Marie P. Evans, wife of William R. Evans, herein joined, authorized, and assisted by her husband, and Wm. R. Evans, as principals, and A. H. Leonard, as surety, are held and firmly bound unto the State National Bank of the City of New Orleans in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said State National Bank, its heirs, administrators, executors, or assigns; for which payment, well & truly to be made, we bind ourselves and each of us by himself and each of our heirs, executors, and administrators firmly by these presents.

Sealed with our seals and dated this July 8th, A. D. 1885.

Whereas said Marie P. Evans & her husband, Wm. R. Evans, have taken an appeal to the Supreme Court of the United States from the final decree of the honorable the circuit court of the United States for the fifth circuit, holding sessions in and for the eastern district of Louisiana, rendered in favor of the said State Na-
1593 tional Bank and against the said Marie P. Evans and her husband, Wm. R. Evans, at the April term, A. D. 1885, of the said circuit court, in the suit entitled Marie P. Evans *et als. vs.* The State National Bank *et als.*, No. 7672 on the docket of said court: Now, the condition of the above obligation is such that if the above-bounded Marie P. Evans & her husband, Wm. R. Evans, shall prosecute their said appeal to effect and answer all damages & costs if she fail to make her plea good, this obligation shall be void; otherwise to remain in full force & virtue.

(Signed) MARIE P. EVANS. [L. S.]
" WM. R. EVANS. [L. S.]
A. H. LEONARD. [L. S.]

I approve this bond.
July 8th, 1885.

ALECK BOARMAN,
U. S. Judge.

1594 *Petition and Order for Appeal. Filed* 21 *May*, 1887.

MARIE P. EVANS & HUSBAND
vs.
THE STATE NATIONAL BANK *et al.* } No. 7672.

To the honorable the judges of the United States circuit court in and for the district of Louisiana:

The petition of Marie P. Evans, wife of Wm. R. Evans, and by him herein duly authorized, and of said Wm. R. Evans, complainants in the above entitled and numbered cause, respectfully represents—

That they feel aggrieved by the judgment rendered and signed by this honorable court in this cause at its April term, 1885, in favor of the defendant, The State National Bank, and against your complainants, plaintiffs therein.

That complainants are informed there is error in said judgment to their prejudice.

That, as shown by the record, the amount in controversy
1595 and dispute in said cause exceeds five thousand dollars, exclusive of interest and costs.

That they desire to appeal from said final decree.

Wherefore complainants pray that they be allowed and granted an appeal from said final decree rendered in this cause at the April term, 1885, to the Supreme Court of the United States, returnable on the second Monday of October, A. D. 1887, upon complainants giving bond with amount as the court may determine, conditioned according to law.

(Signed) A. H. LEONARD, *Solicitor.*

Order.

The appeal prayed for in the foregoing petition is hereby allowed on complainants furnishing bond, conditioned according to law, in the sum of five hundred dollars.

21st May, A. D. 1887.

(Signed) EDWARD C. BILLINGS, *Judge.*

1596 *Bond for Appeal. Filed October* 3, 1887.

MARIE P. EVANS *et al.*
vs.
STATE NATIONAL BANK *et al.* } In Equity. No. 7672.

UNITED STATES OF AMERICA:

Know all men by these presents that we, Marie P. Evans, wife of William R. Evans, herein joined, authorized, and assisted by her husband, and William R. Evans, as principals, and Morris Marks and A. H. Leonard, as sureties, are held and firmly bound jointly

and severally unto the State National Bank of the City of New Orleans in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said State National Bank, its heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves and each of us by himself and each of our heirs, executors, and administrators
1597 firmly by these presents. Sealed with our seals and dated the 3rd day of October, in the year of our Lord eighteen hundred and eighty-seven.

Whereas the said Marie P. Evans and her husband, Wm. R. Evans, having heretofore, to wit, on the 21 day of May, 1887, taken an appeal to the Supreme Court of the United States from and to reverse the decree rendered on the 19 day of June, 1885, by the circuit court of the United States for the fifth circuit, holding sessions in and for the eastern district of Louisiana, in the suit of Marie P. Evans *et als. vs.* The State National Bank *et al.*, No. 7672 of the docket thereof:

Now, the condition of the above obligation is that if the above-bounden Marie P. Evans and her husband, Wm. R. Evans, shall prosecute their said appeal to effect and shall answer all damages and costs if she shall fail to make good her plea, then this
1598 obligation shall be void; otherwise to remain in full force and virtue.

(Signed) WILLIAM R. EVANS, [L. S.]
" A. H. LEONARD,
P'r M. MARKS. [L. S.]
" MORRIS MARKS. [L. S.]

(Signed) ALECK BOARMAN, *Judge.*

1599 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 1,598 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced, on the trial of the case of Marie P. Evans and William R. Evans *vs.* The State National Bank *et als.*, No. 7672 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 15 day of March, A. D. 1888.

Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.

E. R. HUNT, *Clerk.*

I, Edward C. Billings, United States judge for the eastern district of Louisiana, do certify that Edward R. Hunt, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was at

the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 15 day of March, A. D. 1888.

EDWARD C. BILLINGS, *Judge.*

1600 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to the State National Bank of the City of New Orleans, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a petition and order for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein Marie P. Evans, wife of William R. Evans, and William R. Evans are complainants and appellants and you, the said State National Bank of the City of New Orleans, are appellee, to show cause, if any there be, why the decree rendered against the said Marie P. Evans and William R. Evans, as in said petition and order mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 3 day of October, in the year of our Lord one thousand eight hundred and eighty-seven.

EDWARD C. BILLINGS, *Judge.*

1601 [Endorsed:] United States circuit court, eastern district of Louisiana. No. 7672. Marie P. Evans *et al. vs.* State National Bank *et al.* Citation of appeal.

Marshal's Return.

Received Oct. 3, 1887, by the U. S. marshal and on the 3d October, 1887, I served a true duplicate of within citation of appeal on State National Bank *et al.*, appellees herein, by handing same to Mr. Pierre Lanaux in person, he being to my knowledge the president of said State National Bank, & said service was made in the city of New Orleans, State of Louisiana.

Returned same day.

R. B. PLEASANTS,
U. S. M'l, Eastern District of Louisiana,
By DAN. A. ROSE,
D'y U. S. Marshal.

UNITED STATES OF AMERICA,
State of Louisiana.

NEW ORLEANS, *Octo.* 3*rd*, 1887.

I, Daniel A. Rose, being duly sworn, do depose that I am a lawful & duly qualified United States deputy of R. B. Pleasants, U. S. marshal for the eastern district of Louisiana, and that the return as above set forth was made by me and is correctly stated.

DAN. A. ROSE.

Sworn to & subscribed before me this 3d Octo., 1887.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

E. R. HUNT, *Clerk.*

Endorsed on cover: E. Louisiana C. C. U. S. No. 347. Marie P. Evans, wife of William R. Evans, and William R. Evans, appellants, *vs.* The State National Bank of the City of New Orleans. Filed March 31, 1888.

IN THE SUPREME COURT U. S.

OCT. TERM, 1890.

Circuit Court of the United States, Eastern District of Louisiana.

MARIE P. EVANS *et al.*, Appellants,
vs.
THE STATE NATIONAL BANK OF NEW ORLEANS. } No. 347.

It is mentioned in the record in the above-entitled cause, on pages 125, 270, and 271, that certain eight mortgage notes were introduced in evidence at the hearing of the cause in the court below, but such notes do not appear in the record at all. It is hereby agreed by counsel for the parties that the following copies thereof may now be presented to the court and be received with like effect as if they were duly incorporated in the record, and such notes are in the words and figures following, viz:

Note Protested 13th January, 1862, *Filed in U. S. Circuit Court March* 30, 1885.

$10,833.33⅓. NEW ORLEANS, *Dec. 27th*, 1859.

On the tenth January, 1862, after date, I promise to pay to the order of myself, at office of Mess. W. D. Urquhart, in this city, ten thousand eight hundred and thirty-three 33⅓-100 dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

(Signed) S. DUNCAN LINTON.

Written across face: *Ne varietur*. New Orleans, Dec. 27, 1859. (Signed) Theo. Guyol, notary.

Endorsed: #466. 4186 B. R. S. D. Linton. 10,833.33. Jan'y 10. 17703. 4th d't c't. Filed Sept. 26, 1866. J. F. Dick, d'y clerk. S. Duncan Linton. Pay to the order of W. S. Pike, Esq., cashier. W. & D. Urquhart. Pay to the order of C. A. F. Rondeau, Esq., cash. F. E. Hebert, A. cashier. No. 7672. U. S. circuit court, eastern district of Louisiana. Filed March 30, 1885. (Signed) E. R. Hunt, clerk.

Marks in pencil: W. & D. Urquhart 10 Dec'r, 15 do., 20 do., 25 do., 30 do., 1860.

Protested Note, 13th February, 1862.

$10,833.33⅓. NEW ORLEANS, *Dec. 27th*, 1859.

On the tenth February, 1862, after date, I promise to pay to the order of myself, at office of Mess. W. & D. Urquhart, in this city, ten thousand eight hundred and thirty-three 33⅓-100 dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

(Signed) S. DUNCAN LINTON.

Written across face: *Ne varietur.* New Orleans, Dec. 27, 1859. Theo. Guyol, not.

Endorsed: 4187 B. R. S. D. Linton. 10,833.33. Feb. 10, '62. 17703. 4th d't c't. Filed Sept. 26th, 1866. J. F. Dick, d'y clerk. S. Duncan Linton. Pay to the order of W. S. Pike, Esq., cashier. W. & D. Urquhart. Pay to the order of C. A. F. Rondeau, Esq., cash. F. E. Hebert, A. cashier.

Marks in pencil: W. & D. Urquhart. No. 7672. U. S. circuit court, eastern district of Louisiana. Filed March 30, 1885. (Signed) E. R. Hunt, clerk.

Protested Note, 13th March, 1862.

$10,833.33⅓. NEW ORLEANS, *Dec. 27th*, 1859.

On the tenth of March, 1862, after date, I promise to pay to the order of myself, at office of Mess. W. & D. Urquhart, in this city, ten thousand eight hundred and thirty-three 33⅓-100 dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

(Signed) S. DUNCAN LINTON.

Written across face: *Ne varietur.* New Orleans, Dec. 27, 1859. Theo. Guyol, not.

Endorsed: 4188 B. R. S. D. Linton. 10,833.33. M'ch 10, '62. 17703. 4th d't c't. Filed Sept. 26th, 1866. J. F. Dick, d'y clerk. S. Duncan Linton. Pay to the order of W. S. Pike, Esq., cashier. W. & D. Urquhart. Pay to the order of C. A. F. Rondeau, Esq., cash. F. E. Hebert, A. cashier.

Written in pencil: W. & D. Urquhart. No. 7672. U. S. circuit court, eastern district of Louisiana. Filed March 30, 1885. (Signed) E. R. Hunt, clerk.

Protested Note, 18th March, 1862.

$10,833.33⅓. NEW ORLEANS, *Dec. 27th*, 1859.

On the fifteenth of March, 1862, after date, I promise to pay to the order of myself, at office of Mess. W. & D. Urquhart, in this city, ten thousand eight hundred and thirty-three 33⅓-100 dollars, value

received, with interest at the rate of eight per cent. per annum from maturity until paid.

(Signed) S. DUNCAN LINTON.

Written across face: *Ne varietur.* New Orleans, Dec. 27, 1859. Theo. Guyol, notary.

Endorsed: 4189 B. R. S. D. Linton. 10.833.33. M'ch 15, '62. S. Duncan Linton. Pay to the order of W. S. Pike, Esq., cashier. W. & D. Urquhart. Pay to the order of C. A. F. Rondeau, Esq., cash. F. E. Hebert, A. cashier. 17703. 4th d't c't. Filed Sept. 26th, 1866. J. F. Dick, d'y clerk. No. 7672. U. S. circuit court, eastern district of Louisiana. Filed March 30, 1885. (Signed) E. R. Hunt, clerk.

Marks in pencil: W. & D. Urquhart.

Protested Note, 13th January, 1863.

$10,833.33⅓. NEW ORLEANS, *Dec. 27th,* 1859.

On the tenth January, 1863, after date, I promise to pay to the order of myself, at office of Mess. W. & D. Urquhart, in this city, ten thousand eight hundred and thirty-three 33⅓-100 dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

(Signed) S. DUNCAN LINTON.

Endorsed: $1,000. 17703. Filed Sept. 26, '66. J. F. Dick, d'y clerk. S. Duncan Linton. No. 7672. U. S. circuit court, eastern district of Louisiana. Filed March 30, 1885. (Signed) E. R. Hunt, clerk.

Marks in pencil: 518. Pledge for $13,000. Nov. 15. March 18. W. & D. Urquhart. 10 Jan'y, 1861, 15 do., 20 do.

Protested Note, February 13th, 1863.

$10,833.33⅓. NEW ORLEANS, *Dec. 27th,* 1859.

On the tenth February, 1863, after date, I promise to pay to the order of myself, at office of Mess. W. & D. Urquhart, in this city, ten thousand eight hundred and thirty-three 33⅓-100 dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

(Signed) S. DUNCAN LINTON.

Written across face: *Ne varietur.* New Orleans, Dec. 27th, 1859. Theo. Guyol, notary.

Endorsed: 17703. 4th d't c't. Filed Sept. 26, '66. J. F. Dick, d'y clerk. S. Duncan Linton. No. 7672. U. S. circuit court, eastern district of Louisiana. Filed March 30, 1885. (Signed) E. R. Hunt, 885, clerk.

Marks in pencil: 519. Pledge for 20,000. Dec'r. W. & D. Urquhart. Dec. 15. Pledge No. 804.

Protested Note, 13 March, 1863.

$10,833.33⅓. NEW ORLEANS, *Dec. 27th*, 1859.

On the tenth of March, 1863, after date, I promise to pay to the order of myself, at office of Mess. W. & D. Urquhart, in this city, ten thousand eight hundred and thirty-three $\frac{33}{100}$ dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

(Signed) S. DUNCAN LINTON.

Written across face: *Ne varietur.* New Orleans, Dec. 27, 1859. Theo. Guyol, notary.

Endorsed: #1074. 17703. 4th d't c't. Filed Sept. 26th, 1866. J. F. Dick, d'y clerk. S. Duncan Linton. No. 7672. U. S. circuit court, eastern district of Louisiana. Filed March 30, 1885. (Signed) E. R. Hunt, clerk.

Marks in pencil: 520. Pledge for 20,000. Jan'y. W. & D. Urquhart. May 18. Pledge No. 1074.

Protested Note, 18th March, 1863.

$10,833.33⅓. NEW ORLEANS, *Dec. 27th*, 1859.

On the fifteenth March, 1863. after date, I promise to pay to the order of myself, at office of Mess. W. & D. Urquhart, in this city, ten thousand eight hundred and thirty-three 33⅓-100 dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

(Signed) S. DUNCAN LINTON.

Written across face: *Ne varietur.* New Orleans, Dec. 27, 1859. Theo. Guyol, notary.

Endorsed: 17703. 4th d't c't. Filed Sept. 26th, '66. J. F. Dick, d'y clerk. S. Duncan Linton. No. 7672. U. S. circuit court, eastern district of Louisiana. Filed March 30, 1885. (Signed) E. R. Hunt, clerk.

Marks in pencil: 521. Pledge for 20,000. Feb'y. W. & D. Urquhart. Feb. 15. Pledge No. 808.

Approved.

J. McCONNELL,
Counsel for State Nat'l Bank.
W. W. DUDLEY &
A. H. GARLAND &
H. J. MAY,
For Appellants.

See Rec., p. 84, for dates, &c., of the above-named notes.

A. H. G.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 8½ pages contain and form a full, complete, true, and perfect copy of 8 protested notes, with endorsements thereon, in the case of Marie P. Evans *et al. vs.* The State National Bank of New Orleans, No. 7672 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 2 day of March, A. D. 1891.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

E. R. HUNT, *Clerk.*

I, Edward C. Billings, United States judge for the eastern district of Louisiana, do certify that Edward R. Hunt, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was at the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 2 day of March, A. D. 1891.

EDWARD C. BILLINGS, *Judge.*

[Endorsed:] U. S. circuit court, eastern district of Louisiana. No. 7672. Marie P. Evans *et al. vs.* State National Bank of New Orleans. Copy of 8 protested notes and endorsements.

[Endorsed:] Supreme Court U. S. 1890, October term. No. 347. Marie P. Evans, app't, *vs.* The State National Bank of the City of New Orleans. Stipulation and addition to record. Filed Mar. 13, 1891.

Office Supreme Court U. S.
FILED,
APR 13 1891
JAMES H. McKENNEY
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1890.

MARIE P. EVANS AND OTHERS,
APPELLANTS,
v.
THE STATE NATIONAL BANK, &c.

No. 347.

Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

BRIEF FOR APPELLANTS.

A. H. GARLAND,
H. J. MAY,
W. W. DUDLEY,
L. T. MICHENER,
For Appellants.

WASHINGTON, D. C.:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1891.

In the Supreme Court of the United States.

OCTOBER TERM, 1890.

MARIE P. EVANS AND OTHERS, APPELLANTS,
v.
THE STATE NATIONAL BANK, &c.
No. 347.

Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

BRIEF FOR APPELLANTS.

This suit in equity was filed in the court below to have an account taken of a large amount of property, especially cotton, belonging to a party represented by the appellants, seized and appropriated by the appellee (Rec. 1–7). Appellee, after attempting to defeat the suit by plea, as to want of proper parties and irregularity of certain proceedings relied on by the appellants (Rec. 7–11), finally came up boldly and defended by demurrer, plea, and answer (Rec. 63, *et seq.*), and swore with the directness and positiveness that are usually found in answers of parties engaged in fraudulent schemes, to make use of and enjoy the property of others, without value paid or consideration rendered.

After much pleading and counterpleading, the cause at last came to a hearing upon these, and a large mass of proof, of one kind and another, and the court below found broadly on the facts, there was no fraud, and appellants had failed to make out a case, and dismissed the suit as to appellee (Rec. 630–7).

The appeal is prosecuted from this decree, and the error assigned is, the court below found for appellee and dismissed the case, when it should have found for appellants, and sustained the bill and amended and supplemental bills, and decreed in favor of appellants as prayed for in those bills; and a reversal of that decree is here asked, and this Court is requested to direct the entry of such a decree in this cause as the court below should have rendered.

The record discloses several questions of law outside of the merits on the facts, but as the court below did not touch them, but passed upon the facts, we will devote our attention alone to them and to the law arising upon or in connection with them.

Necessarily, then, as many facts are to be discussed, weighed and considered, and as the result must obviously be reached to a great extent "by the winding path of circumstance," minuteness, if not prolixity, must be indulged in in the statement of facts.

On December 27, 1859, S. D. Linton, then a wealthy planter, executed a mortgage on a cotton plantation and improvements thereon, situated in the Parish of Rapides, known as the "Quantico Plantation," and the stock, cattle, horses, farming utensils, implements of husbandry, and 195 slaves thereto attached, to secure a debt of $130,000.00, which he owed his commission merchants, W. and D. Urquhart, of New Orleans, evidenced by 12 notes for $16,833.33⅓ drawn to his order and by him endorsed, maturing January 10/13; February 10/13; March 10/13,

and March 15/18, of years 1861, 1862, and 1863 (Rec. 84, 428–433; Rec. 316). A few days after, the Louisiana State Bank—now the State National Bank—discounted 3 of said notes, viz., those maturing February 10/13; March 10/13, and March 15/18, A. D. 1862, and received 4 of said notes, viz., those maturing January 10/13, 1862; February 10/13; March 10/13; March 15/18, 1863, as collateral to secure payment of a note given by W. and D. Urquhart to the bank for money borrowed, amounting to the face amount of the notes pledged (see stipulation printed). The ability of Linton to provide for his notes was not questioned by himself or those who held them. They would doubtless have been met when due, but, shortly after the notes first falling due matured, the country was precipitated into a revolution. Louisiana seceded, joined the other States in creating the Southern Confederacy, and marshaled all her resources to meet the shock of rapidly approaching war. The State became a military camp; her people were wild with excitement; the ordinary affairs of life were ignored or neglected, and confusion reigned. In view of probable contingencies, Linton (as he stated under oath) effected an arrangement by which the notes falling due in 1861 were extended one year. Such being the situation on March 15, 1861, W. and D. Urquhart, who for some cause, real or fancied, feigned, considered, or affected to consider themselves in some manner aggrieved by Linton, instituted in the 4th District Court of Orleans Parish a suit against him for $3,108.00, based on an open account, and on commissions alleged to be due on cotton which they claimed should have been shipped to them by Linton (Rec. 418–426).

The then Governor of Louisiana had issued a proclamation advising against any shipment of cotton to New Orleans from the interior, and the managing partner of

the firm of W. & D. Urquhart was, at the time, on the Governor's staff, and in full sympathy and accord with him (Rec. 309).

It seems strange that W. & D. Urquhart should assume to be offended with Linton, because he acted in accordance with a proclamation approved by them. Be this as it may, the suit was instituted. On the 25th March, 1861, Linton, by his attorney, excepted to the jurisdiction of the court, alleging his domicile to be the Parish of East Baton Rouge. With this the suit lapsed; no further action has since been taken therein (Rec. 421).

On the same day, and in the same court, David Urquhart, one of the firm of W. & D. Urquhart, instituted Cause No. 14,665, entitled David Urquhart *v.* S. D. Linton, a suit for executory process (Rec. 399, 418). In the petition, signed by J. K. Elgee, attorney, it is alleged that Linton is indebted to Urquhart in the sum of $32,500, with interest, for three notes hereinbefore mentioned, viz: those maturing respectively January 13, February 13, and March 13, 1861. The mortgage executed by Linton is made part of the petition, and an order of seizure and sale prayed for (Rec. 399, 400). On same day an order of seizure and sale was granted, directing the sheriff of Rapides Parish to seize and sell the property mortgaged, for cash, to satisfy amount sued for, and on such terms of credit as will correspond with the falling due of the remaining nine notes, set forth and described in the act of mortgage aforesaid (Rec. 400). The notes sued on are alleged to have been withdrawn. The transcript of the cause contained the following singular statement:

"Three notes and protest to be delivered to the order of J. M. Wells. Received the three notes and protest in this case. D. Urquhart, by Hyams and Jonas, attorneys. February 15, 1866" (Rec. 408).

A writ of seizure and sale issued in said cause, No. 14,665, directed to the sheriff of Rapides Parish, under which that officer advertised the mortgaged property for sale on the first Saturday in May, 1861. This writ does not appear in the transcript; it was neither executed nor returned, and was destroyed with all other papers of the sheriff's office when the court-house of Rapides Parish was burned by the Federal Army in 1864, as will hereafter be shown (Rec. 171–2–3). The sheriff made a mere paper seizure, if any. He certainly did not take actual possession of the property mortgaged; it remained in Linton's possession, and was managed and controlled by him, through his overseers and agents, until August, 1863 (Rec. 243–4–5; 248). The execution of this writ was enjoined by Linton, who, on April 20, 1861, instituted in Fourth District Court of Orleans Parish suit No. 14,846, entitled S. D. Linton *v.* D. Urquhart. In his petition Linton alleged that, by agreement between himself and Urquhart, the time for payment for all the notes which, on their face, matured in 1861, including those sued on by Urquhart, had been extended one year. On Linton's affidavit to that effect, and in accordance with the prayer of his petition, an injunction was granted by the Judge of the Fourth District Court against D. Urquhart and the sheriff of Rapides Parish, ordering them to suspend the sale of said mortgaged property under the said writ of seizure and sale issued in the suit of D. Urquhart *v.* S. D. Linton, No. 14,665, until the final hearing and decision of the suit instituted by Linton *v.* Urquhart. On this order, writs of injunction issued to David Urquhart and to the sheriff of Rapides. No further action has since been taken in said cause (Rec. 423, 426).

On the 22d March, 1861, Aaron Cohen, through his attorney, J. K. Elgee, instituted in the same Court cause

No. 14,708, *v.* S. D. Linton, praying for executory process to enforce payment of one of the notes aforesaid, viz., note maturing March 15–18, 1861 ; and obtained a decree directing the sheriff of Rapides Parish to sell the property mortgaged as aforesaid for cash, to satisfy the amount claimed by Cohen ; and on terms of credit to correspond with falling due of other mortgage notes maturing in 1862 and 1863. The writ issued in this case was never returned. It was destroyed with the court-house of Rapides. But it was fully satisfied by Henry Perkins, who, acting for Linton, went to Alexandria, in the early part of the year 1861, and paid to the sheriff of Rapides, in gold, the full amount sued for in the name of Cohen—some eleven thousand dollars. (Rec. 409, 418, 254–258.)

In April, 1862, the Federals captured New Orleans, and in a short time thereafter occupied and held, until the close of the war, a considerable portion of Southern Louisiana. Meanwhile their fleet ascended the Mississippi river and the Red River, and some time in the spring of 1863, held Alexandria, on Red River, in Rapides Parish, for a few days, the Confederate forces resuming possession when the gunboats withdrew ; and from that time until the Banks expedition arrived in Rapides, in the spring of 1864, the Confederate army held the Parish, and the Confederate government was paramount therein. (Rec. 168.)

It was evident, however, that the Federals could occupy Alexandria or any other place on a river navigable by their gunboats, whenever they desired so to do, and this fact was well known by the parties through whose combined action Linton was despoiled of his property.

In the month of April or May, 1863, Linton, accompanied by his wife, went to the Quantico Plantation. It was then in his possession and under his exclusive control. He placed an overseer or manager in charge of the place,

employed an engineer, there being a steam-gin on the plantation, and, remaining only a short time, went to Texas, and from there to Cuba, and from there, in the fall of 1863, to Europe, where he remained until after the close of the war. (Rec. 243, 245, 248.)

On the 21st day of August, A. D. 1863, J. K. Elgee, the same attorney who represented Urquhart and Cohen in their suits against Linton, instituted in the Parish of Rapides two other suits against Linton, one in the name of Urquhart and one for the Louisiana State Bank, in which suits two writs were issued by the clerk of the District Court of Rapides, and by that officer placed in the hands of the deputy sheriff of the parish, John Clements, then in full and sole charge of the sheriff's office, the sheriff being absent in the Confederate army. Under these writs, and acting under written instructions given by J. K. Elgee, attorney of the plaintiffs in said suits, Clements seized some 1,800 bales of cotton (or rather cotton amounting to some 1,800 bales, only a portion of it being baled at the time), the property of S. D. Linton, and then on the Quantico Plantation, served notices of seizure on Wm. Morris, who had been left in charge of the plantation when Linton went to Europe, and, still acting under Elgee's written instructions, appointed J. Madison Wells keeper of the property so seized, and put him (Wells) in possession of same (243-5; 248, 169).

These suits, writs, instructions of Elgee, attorney, and sheriff's returns, showing seizure, were all destroyed with the court-house of Rapides Parish when that building was burned in 1864 (Rec. 171–175).

Some months after Wells had been put in possession of Linton's cotton, he left Rapides Parish and came to New Orleans, where he remained some time, became a candidate for the office of Lieutenant-Governor of Louisiana, at

an election held under Federal auspices in February, 1864, and was elected. Meanwhile, General Banks was moving northward on his Red River expedition, and Wells returned to Rapides with him. The expedition continued on to Mansfield. On his return to Rapides Parish, Wells chartered a railroad, which ran from Alexandria through the Quantico Plantation to Lecompte, and by means of this railroad removed to Alexandria all of the cotton which he held as keeper (Rec. 131–155).

The Federal forces were repulsed at Mansfield, and retreated, making, however, a stand at Alexandria for several days. During their stay Wells managed to ship on Government transports which accompanied the Banks Expedition the cotton which he had brought into Alexandria from the Quantico Plantation. A portion of same, about one thousand bales, was carried to New Orleans, and the balance, about eight hundred bales, was taken up the Mississippi river to some point in Illinois (Rec. 130–136; 186–188). The cotton which arrived at New Orleans was consigned to and received by C. A. Weed & Co., who sold the same and paid to Wells the net proceeds thereof, some $340,000 (Rec. 238–9, 263–4, 178–186, 218–220). The evidence gives no further account of the cotton, worth at that time at least $300,000, which went up the Mississippi river.

Linton, absent in Europe, had no knowledge of the seizures made in 1863, or of the removal of his cotton, and died ignorant of the facts. Brooding over the war and its disastrous results to him, his mind, shortly after his arrival in Europe, became so seriously affected that he was incompetent to manage his affairs. In 1866 he was interdicted by one of the courts of Paris, France, where he then resided, and soon thereafter, to wit, in the early part of the year 1867, died (Rec. 195–8). Meanwhile, after the close

of the war, and some time in the fall or winter of 1865, Linton, with his wife, came back to Louisiana, remaining in New Orleans some months. Linton's mental condition, however, prevented him from learning the true condition of his affairs, and his wife, reared in luxury, was absolutely without experience in matters of business. They returned to Paris some time in the year of 1866, no wiser than when they left there. Linton died in Europe, as stated. His widow remained there until the winter of 1869–'70, when she returned to this country, where she has since lived. Some time after her return she was informed of the facts hereinbefore stated, and thereupon commenced a struggle against desperate odds to compel the spoliators to account for the property which they had wrongfully taken (Rec. 189–194).

Before proceeding further, it may be well to state, 1st, that the Louisiana State Bank was some time since changed into a national bank, and is now known as the "State National Bank." It is conceded that the State National Bank succeeded to all the rights and is liable for all obligations of the Louisiana State Bank; for convenience it will be referred to as the Bank. 2d, the succession of Linton is now represented by the complainant, Marie P. Evans, his widow, executrix of his last will, in which she is constituted his sole universal legatee.

The above facts were presented on behalf of the appellants below and adopted by Judge Pardee, after having transposed some of the paragraphs. (Rec. 630–634; 24 Fed. Rep. 325.)

There will not probably be any serious contest as to the law governing the case. It raises only questions of fact. If we have stated the facts correctly, the heirs of Linton are certainly entitled to a judgment against the Bank, Urquhart, and Wells, *in solido*, for the cotton removed and

disposed of by Wells. Linton was dispossessed through the action of the Bank and Urquhart, and at their special instance Wells was put in possession. They are bound to account for the property seized by them and so placed in charge of Wells. The evidence fully and clearly substantiates the statement of facts hereinbefore made, and will now be stated in detail:

When the Red River expedition, commanded by Gen. Banks, withdrew from Alexandria in May, 1864, the town was fired. Among other buildings the court-house of Rapides Parish was burned, and with it all the archives of the Parish were consumed. This fact is proved by the testimony of D. W. Shaw and John Clements. (Rec. 130-142, 168.) It is also shown by the following allegation in the answer of the Bank, viz: "While execution of the writ was thus suspended, the court-house of Rapides Parish was burned, and all the sheriff's papers, including said writ, were destroyed." (Rec. 83.) The writ referred to being the writ of seizure and sale issued in case of D. Urquhart *v.* S. D. Linton.

The records having been thus destroyed, the institution of the suit against Linton by the Bank, the issuance of the writ therein, and the action thereunder taken, can be shown only by parol, which is now the best evidence attainable. On these points we have the testimony of John Clements, Mrs. Morris, and Jackson Johnson. Mr. Clements made the seizure for the Bank. He states that in the year 1863 he was deputy sheriff of the Parish of Rapides, in charge of the office, the sheriff, Neal, having left the Parish with the Confederate army; that the clerk of the court of Rapides Parish placed in his hands two writs, one issued in the suit of the Louisiana State Bank *v.* S. D. Linton, and one issued in the suit of Urquhart *v.* Linton; that he received written instructions from J. K.

Elgee, attorney of the plaintiffs, under which he proceeded to the Quantico Plantation and seized thereon, as the property of S. D. Linton, between 1,600 and 1,800 bales of cotton; served notice of seizure on Wm. Morris, whom he found in charge of the plantation; appointed J. Madison Wells keeper of the cotton, and put him in possession of same. Clements states further, that these writs were not returned; that they were retained in the sheriff's office and destroyed by fire. (Rec. 167–178, 228–232.)

Mrs. Morris states that she lived on the Quantico Plantation during the year 1863; that Mr. Linton placed her husband, Mr. Morris, in charge of said plantation as overseer and manager; that some time in the month of August, 1863, John Clements, the deputy sheriff of Rapides, came to the Quantico Plantation with two writs of seizure against S. D. Linton; one for the Louisiana State Bank for a very large amount, and the other for a Mr. Urquhart, under which Clements seized all the cotton on the plantation—about 2,000 bales; that J. Madison Wells was appointed keeper and took charge of the cotton; that the notices of seizure were served on her husband; that she read them, saw them frequently, and had them in her hands, but does not know where they are; that she removed from the plantation on November, 1863, and that her husband died a short time before the date on which her evidence was given. (Rec. 243–245).

Jackson Johnson states that in 1863 he was engineer on the Quantico Plantation—placed there by Linton; that in August, 1863, John Clements, deputy sheriff of Rapides, came to Quantico with two writs; one in case Louisiana State Bank *v.* Linton, one in case of some merchants in New Orleans *v.* Linton, issued from the court of Rapides Parish, under which Clements seized the cotton on the plantation, some 1,700 or 1,800 bales, and that Clements served the papers on Wm. Morris. (Rec. 247–249).

a rather singular transaction which occurred during the war, with which the cotton shipped from Quantico was for a time supposed to be connected.

J. M. Lapeyre, one of the largest stockholders, a director and president of the Bank, seems to have been intelligent, capable, shrewd, plausible, and bold—a confederate among confederates. He managed when the Federals came to ingratiate himself with those in command, and in consequence was enabled to do much which inured to his benefit and in the interest of the Bank. For instance, the Bank had in its coffers a large amount of Confederate money, over $1,000,000, which, of course, had no value in New Orleans at that time. Lapeyre effected an arrangement with the Federal authorities by which the Bank was permitted to send this money by its agents through the Federal lines into the Confederate lines, with the understanding that cotton in the Confederate lines should be bought with this money, which, when brought to the Federal lines, should be allowed to come in. For this privilege the Bank was to pay over to the Federal authorities a certain percentage of amount realized from such cotton. Lapeyre selected as the agents of the Bank for these purposes Messrs. John A. Stevenson and John J. Green. Owing to some difficulties in which Stevenson became involved, Zuntz became, in some way, pecuniarily interested in this cotton transaction, and, as business was managed rather loosely in those days, he kept a sharp lookout for any cotton arriving in New Orleans under this agreement. Zuntz learned that on the steamers which returned from the Banks expedition Wells had brought into New Orleans a considerable amount of cotton. Zuntz believed this cotton belonged to the Bank and came in under the said agreement with the Federal authorities. If so, he had an interest in it. So he went to the office of

C. A. Weed & Co., to whom the cotton was consigned, to inquire about it. From there he went to the Bank several times, and claimed that the cotton brought in by Wells was Bank cotton, bought under the arrangement aforesaid, and that he was entitled to a portion of it. "A great stir was made," but Zuntz got nothing, and finally abandoned the matter.

It appears from Zuntz's statement that the Bank was interested in some way in the cotton brought in by Wells, but that the Wells cotton was said to be in no manner connected with the agreement between the Bank and the Federal authorities (Rec. 209–218).

The connection of the Bank with the Quantico cotton is shown from another standpoint. Cotton which came within the Federal lines during the war was very valuable, and was looked after very closely, particularly by the officers of the Government. One of these officers, R. C. Hutchinson, testifies that when the Banks expedition returned from Red River, he was in the secret service of the Government, specially engaged in looking after Government cotton; that he was informed that some cotton had been brought from the Quantico Plantation to New Orleans by the Banks expedition; that he supposed the cotton was Government cotton, and so believing, called on C. A. Weed & Co.; they satisfied him that the cotton was not cotton which had belonged to the Confederacy, and said it was cotton which had been seized by some Bank (Rec. 150–155).

A. V. Ward, also an officer in the secret service when the Banks expedition returned, states that he knew cotton was brought into New Orleans by the Government transports attached to the expedition, and that J. Madison Wells had some connection with it; investigated the matter and reported to Col. Kilbourne, Chief of Detective De-

partment of the Gulf, who sent him (Ward) after J. M. Lapeyre. Mr. Lapeyre came to Col. Kilbourne's office. Kilbourne asked Lapeyre about this cotton, stating that he was informed it was cotton sent in by John A. Stevenson. Lapeyre said: "No," it was cotton for which he had a permit—Madison Wells' cotton on which the Bank had a lien (Rec. 222).

Col. C. W. Kilbourne states that he received information that some cotton had come into New Orleans with the Banks expedition, was Stevenson's cotton, and thereupon sent for Mr. J. M. Lapeyre, who came to his office. Mr. Lapeyre said this cotton came to New Orleans consigned to C. A. Weed & Co.; that it was not Stevenson's cotton, but cotton purchased with money that belonged to some other fund, brought in under a permit of J. Madison Wells. (Rec. 203–4–5.) Mrs. Evans, appellant, testifies that she was told by Wells that the Bank was connected with the cotton. (Rec. 193–4.) That in 1865, or early in 1866, she was told by Urquhart that he was a mere cat's-paw in the hands of the Bank, and that she must see Mr. Lapeyre about Mr. Linton's business matters. (Rec. 190–1.) That some time in the year 1866, at the suggestion of Gov. Hyams, then attorney of the Bank, she called on Mr. Lapeyre, president of the Bank, and was informed by Lapeyre that the Bank had seized the cotton on Quantico, and was not yet satisfied. (Rec. 196.) This statement of Lapeyre is also testified to by Henry Perkins, who was present when it was made. (Rec. 260–1.) Mrs. Evans states further that after the institution of the present suit D. Urquhart said to her: "You know I was acting for the Bank, and you had no right to bring suit against me." (Rec. 195.) This testimony is not contradicted by any one.

Such is the evidence in detail. It proves conclusively

the correctness of the statement of facts made herein at the outset. It proves that the Bank, in combination with D. Urquhart and J. Madison Wells, under the forms of a legal process, got possession in August, 1863, of some 1,800 bales of cotton belonging to S. D. Linton, then on the Quantico Plantation, which, in 1864, they removed on transports attached to the Banks expedition; that one thousand bales of this cotton came to the city of New Orleans, where it was disposed of, and that J. M. Lapeyre, president of the Bank, had full knowledge of the facts.

It is almost impossible to avoid the conclusion that the Bank received a portion of the proceeds realized from the sale of this cotton. The testimony of Weed, McKee, Hall, Zuntz, Hutchinson, Ward, and Kilbourne shows that Lapeyre knew that this cotton had been brought in by Wells; knew that it came from the Quantico Plantation, and so knowing, claimed it for the Bank, and made good his claim. Holding, as the Bank did at that time, Linton's notes for over $100,000, which, as a result of the war, were then of little or no value, if his cotton disappeared, it is incredible that Lapeyre would have allowed Wells to appropriate the entire proceeds of this cotton.

The evidence, then, establishes clearly the truth of the allegations made by complainants, and they are entitled to a judgment against the Bank, Urquhart, and Wells, *in solido*, for the value of the cotton at least, $630,000, with interest from May, 1864. The evidence shows also that these parties held possession of the Quantico Plantation, and disposed of the same as if it were their own property for some four years, and appropriated besides other personal property of Linton which was on the plantation. All this, however, it is unnecessary to discuss, since the value of the cotton is more than the defendants can now be made to pay.

Against this conclusive evidence in favor of complainants, the defendantss, Urquhart and Wells, have nothing to say. The Bank, a soulless corporation, is the only party defendant bold enough to attempt a defence.

The present officers of the Bank profess to be, and doubtless are, ignorant of many things which occurred before they had charge of the Bank. They are, therefore, pronounced in negation, but mere negation cannot avail much against the case presented by appellants, and the appellee is compelled to assert some affirmative defence. It is insisted, on behalf of the Bank, that any seizure of cotton on the Quantico Plantation was made under writ issued in case of David Urquhart *v.* S. D. Linton, No. 14,665, Fourth District Court, Parish of Orleans (Rec. 399-409).

This defence is either a bold attempt to confuse the Court, or it is based on a singular misconception. There are several reasons, each conclusive, why no writ could issue in August, 1863, in suit of Urquhart *v.* Linton, No. 14,665, to the sheriff of Rapides Parish, directing him to seize any cotton on the Quantico Plantation:

1st. Because the suit 14,665 was for executory process, and the only order in that case which was either granted or asked for was an order for seizure and sale, directing the sale of certain mortgaged property, to wit: The Quantico Plantation, with stock, cattle, mules, horses, farming implements, machinery, and 195 slaves attached to the plantation. On this order no writ could issue at all, except a writ directing the seizure and sale of the property mortgaged. See act of mortgage for description of property subject to seizure (Rec. 412, 413).

2d. The execution of the order of seizure and sale in case No. 14,665 was enjoined in April, A. D. 1861, and still remains enjoined (Rec. 423).

3d. In August, 1863, the Parish of Rapides was in the

Confederate lines, and the Confederate Government was paramount therein, and the Parish of Orleans was held by the Federal forces, and the United States was paramount therein. It is absurd to say that a writ issued from a court held under authority of the United States would be sent to an officer holding under the Confederate States. No such officer would have received a writ so issued, much less have attempted to execute it. Any such attempt would have cost him his life.

4th. Under the law of Louisiana, the sheriff of Rapides Parish could not have held possession of any property under any writ issued in suit No. 14,665, Act No. 62 of the General Assembly, approved January 17, 1862, provided that no property should be sold under judicial process, unless it brought the full amount of its value prior to the war.

When a writ of seizure and sale came into the hands of the sheriff it became his duty to offer for sale the property indicated in the writ; if it brought the amount of its value, on the 1st of April, 1861, it was sold; if not, sale was suspended until twelve months after termination of the war, and the property had to be restored to the defendant.

There is no legal evidence tending to show that the cotton on Quantico Plantation was seized under a writ issued in suit No. 14,665. The misconception of appellee on that point arises from a very remarkable proceeding in that suit taken shortly after the close of the war.

Some time in the latter part of October, 1865, David Urquhart says he received an anonymous letter informing him that a lot of cotton had been taken from the Quantico Plantation by the United States Cotton Bureau and brought to New Orleans. This anonymous communication was immediately recognized by Urquhart as coming from J.

Madison Wells, one of the co-defendants herein. Urquhart went to see Wells, and together they went with an attorney, Judge Manning, to the Treasury Agent, who released the cotton. After that there was what Urquhart in his testimony calls "a mixed-up affair." (Rec. 296). Abandoning their attorney, Judge Manning, Urquhart and Wells went to Hyams & Jonas, then attorneys for the Bank. (Rec. 296, 319, 320).

On the 31st of October, 1865, Hyams & Jones, as attorneys for Urquhart, filed in the Fourth District Court of Orleans Parish, in the suit No. 14,665, David Urquhart *v.* S. D. Linton, a motion for an order of seizure, directing the sheriff of Orleans Parish to seize sixty-five bales of cotton alleged to have been fraudulently taken from the custody of the sheriff of Rapides Parish by the procurement of Henry Perkins. It was further alleged that said cotton was grown and gathered after the writ of seizure was duly executed, and enured to the benefit of the seizing creditor, and while in the custody of the sheriff of Rapides Parish was taken from him and brought to New Orleans. It is stated in such motion that plaintiff appends hereto the return of the sheriff of Rapides Parish to the original writ of seizure issued by the Fourth District Court on the 18th of March, 1861, showing seizure, advertisement, etc., and also the order of the sheriff of Rapides Parish putting the cotton in the custody of J. M. Wells, as his agent, to guard the same. An order of seizure was granted, and fifty-three bales of cotton marked O. N. C. seized, which seizure was on November, 9, 1865, released by order of Hyams & Jonas, attorneys. (Rec. 401–2). Urquhart says he received one-half of the proceeds arising from the sale of this cotton, and that Perkins got the other half (Rec. 296–7).

A very remarkable document signed *W. J. Neal, sheriff*, was filed with motion of 31st October, 1865, viz:

"David Urquhart *v.* S. D. Linton, Fourth District Court, No. 14,665.

"In this case an order of seizure and sale, issued 18th March, 1861, addressed to the sheriff of the parish of Rapides, and which was duly executed by seizure of the property therein described, all of which will appear by the writ of seizure, and return thereon made by the sheriff of the parish of Rapides on the 21st March, 1861, and after due notices, was advertised on 3d April, 1861, to be sold on the 4th May, 1861. After the seizure, and before the day of sale, all further proceedings were stayed, but the sheriff was in duty bound to keep and duly kept possession of the property up to the present day, and it is now advertised for sale. The cotton was gathered during the possession of the sheriff, and as such, under the law of Louisiana, formed a part of the effects seized and are held under the seizure, and forms as much a part of the security of the same creditor as the land itself. These facts and the actual possession of the cotton are patent by the writ of seizure itself, now submitted, and the authorization of the sheriff, Wm. J. Neal, to Major (now Governor) Wells to take charge for him of all cotton, corn, and personal effects on the Linton Plantation, and he has authority, further, to keep all intruders off the land.

"W. J. NEAL, *Sheriff.*

"APRIL 21, 1863."

Then comes the following statement:

"Art. 457, Civil Code: The fruits of an immovable gathered or produced since it was under seizure are considered as making a part thereof, and inure to the benefit of the person making the seizure. (See also 9 Robinson, 256, and 1st Hennen Digest, page 647, for many decisions in point.)

"This cotton was grown and produced while the plantation was under seizure by the sheriff of Rapides Parish, at the suit of David Urquhart, and Governor Wells was the custodian of the property which is now, and has been

since March, A. D. 1861, under seizure, the sale having been stayed by the general stay law in 1861.

"The seizing creditors hold the cotton legally against the world, and neither the debtor nor any assignee, or person claiming through him, can set up any legal claim to the cotton.

"Governor Wells has an interest in the debt although not a seizing creditor by name, as well as being the custodian for the sheriff for the benefit of Mr. Urquhart, the seizing creditor.

"(Signed) J. MADISON WELLS,
"DAVID URQUHART.

"The writ of seizure and seizure, and return of sheriff of Rapides, marked A. Sheriff's order to Gov. Wells to take charge of and keep the cotton, marked B. When the authorities choose to name a day full testimony, if considered necessary beyond the sheriff's return, can be submitted."

"(Signed) J. M. W.
"D. U." (Rec. 401–2).

The motion filed October 31, 1865, and the papers above copied filed with it, are evidence as against complainants of nothing more than *rem ipsam*.

They certainly do not establish, themselves, the truth of their recitals, which can have no effect as against appellants, unless established by evidence *aliunde*.

There is no such evidence. Appellee hoped to adduce such evidence by the testimony of David Urquhart and B. F. Jonas, but these gentlemen were absolutely without any personal knowledge, and knew nothing whatever about the matters and things stated in motions and papers filed with it, except from hearsay (Rec. 305–324; 279–287).

The motion and papers filed with it, on their face, show that they were manufactured to serve a special purpose. The anonymous communication received by Urquhart,

which, though anonymous, he knew came from Wells, and the motion and the papers filed with it, were steps taken in carrying out a conspiracy to get control of certain cotton then in the hands of Treasury officers. They accomplished their purpose, at least partially. Nevertheless, these transactions cannot now, and never could honestly, bear the slightest critical examination.

Messrs. Jonas and Urquhart say that certain papers referred to in motion filed October 31, 1865, as "the writ of seizure, and seizure, and return of the sheriff of Rapides marked "A," and sheriff's order to Governor Wells to take charge of and keep the cotton, marked "B," were actually in existence and were really filed with said motion. It may be true that there were papers which purported to be writ of seizure, sheriff's order to Governor Wells, etc.; if so, these papers were forgeries. They are not now in existence, or at least they have mysteriously disappeared. Mr. Jonas, as the only possible explanation of their disappearance, says "they may have been taken out and sent to the Parish of Rapides where the proceedings were instituted, and may have been destroyed when the court-house (of Rapides) was burned." (Rec. 275). The papers referred to purported to belong to proceedings instituted in the Fourth District Court of Orleans Parish. There was no reason for sending them to Rapides. The court-house of Rapides Parish was burned in the year 1864, consequently the papers said to be in existence on the 31st of October, 1865, could not have been destroyed when the court-house was burned (Rec. 171–2).

It is simply impossible that the papers which Mr. Jonas saw were genuine, because it is established beyond all doubt that the original writs of seizure and sale issued in suit No. 14,665, D. Urquhart *v.* S. D. Linton, to the sheriff

of Rapides Parish, together with all other papers, returns, etc., therewith connected, were destroyed, as heretofore shown, with the court-house of Rapides Parish, in May, 1864. This fact is alleged in appellee's answer, and it is proved by the testimony of several witnesses, including John Clements, who was deputy sheriff of Rapides Parish, and in charge of the sheriff's office when it was burned. Such being the fact, the disappearance of the papers said to have been filed with the motion filed October 31, 1865, can be rationally accounted for. They were manufactured for a special purpose, and after that purpose was accomplished they were suppressed.

The document filed with motion of October 31, 1865, hereinbefore copied, while it answered its purpose partially, was nevertheless a bungling affair. It recites that in a case of Urquhart *v.* Linton, No. 14,665, an order of seizure and sale addressed to the sheriff of Rapides Parish was issued on the 18th day of March, 1861. This statement is absolutely erroneous. The suit No. 14,665 was not filed until the 15th day of March, 1861. The decree directing issuance of a writ of seizure and sale after due notice to the defendant was signed on the 15th March, 1861. A writ of seizure and sale could not issue until three clear days after a notice of the order had been served on defendant. If such notice was served on the 15th March, no writ could issue until the 19th March. It is absolutely certain that the writ originally issued in suit No. 14,665 did not bear date March 18, 1861.

The document further recites: "After the seizure and before the day of sale all further proceedings were stayed by the general stay law in 1861, but the sheriff, as in duty bound, kept possession of the property up to the present day."

These are palpable errors. There was no general stay

law in 1861. A law was passed in 1862 regulating sales under execution, which has been called to the attention of the Court. Under its provisions it was the duty of the sheriff, in executing the writ placed in his hands, to have the property therein designated appraised at its value on the 1st day of April, 1861, and if, when the property was offered for sale, it did not bring the full amount of such appraisement, then the property could not be sold until twelve months after the termination of the existing war between the Confederate States and the United States, and was to be returned to the defendant. It is false, therefore, that further proceedings were stayed by the general stay law in 1861, and it is also false that the sheriff was in duty bound to keep possession of the property up to the present day. Under the law, the sheriff was in duty bound to sell the property provided it brought its appraised value, and to restore it to Defendant Linton in event it did not. The statement that the sheriff kept possession of the property continuously from the 21st March, 1861, up to the present day is simply ridiculous. We know, from the testimony of Clements, Johnson, and Mrs. Morris, that Linton was in undisturbed possession of the Quantico Plantation and everything on it in the early part of the year 1863, but such testimony was not necessary. The very record itself, in case Urquhart *v.* Linton, contradicts the statement that there was such continuous possession.

The record shows that on the 6th of October, 1865, on application of Urquhart, through his attorneys, a writ of seizure and sale issued from the Fourth District Court of Orleans Parish to the sheriff of Rapides Parish, directing him to seize and sell the Quantico Plantation, together with the buildings and improvements, engines, machinery, and apparatus, stock, cattle, horses, mules, farming utensils, and implements of husbandry on said plantation.

The writ was received by the sheriff of Rapides on the 12th of October, 1865, and thereafter, under its authority, the sheriff, as shown by his return, seized the property designated in the writ and held it until the 21st of November, 1865, when the writ was ordered to be returned by Urquhart's attorneys.

The issuance of this writ and the seizure thereunder prove conclusively, that the papers referred to in the motion of October 31, 1865, and in document therewith filed as papers marked A and B, viz., original writ, with return and order appointing Wells, were false and fraudulent. It proves also that the sheriff of Rapides Parish did not retain possession of the property under the original writ placed in his hands.

The "document" filed with the motion further recites that the writ of seizure itself is now submitted, and the authorization of Sheriff Wm. J. Neal to Major (now Governor) Wells to take charge for him of all the cotton, corn, and personal effects on the Linton Plantation, and he has authority to keep all intruders off the land.

(Signed) J. W. NEAL,
Sheriff.

April 21, 1863.

This recital indicates that a seizure was made in 1863. It shows also that the entire document is false. On the 21st of August, 1863, Wells was not "now Governor." He became Governor in 1864.

The seizure of the sixty-five bales of cotton, and each and every action therewith connected, is inexplicable on any other theory than that of a conspiracy to defraud. When Urquhart received the anonymous communication, which by some unexplained means he knew came from Wells, he had no knowledge whatever of the matter to which it related. He was absent from Louisiana during

the war, and in active service in the Confederate army; he admits he has no personal knowledge and knows nothing of any consequence with reference to matters at issue, except from statements made to him by others; he first stated that his information was derived from his attorney, J. K. Elgee, but when his attention was called to the fact that Elgee died during the war, and that he (Urquhart) never saw or heard from Elgee after 1862, Urquhart then said that his information was derived from his attorneys, Hyams & Jonas. It is to be noticed in this connection that Jonas states that his information was derived from Urquhart.

Well, Urquhart received the communication and thereupon went to Wells. He received no explanation from Wells, but together they go to Judge Manning, who represents them as attorney in an application to the Treasury Agent for the release of the cotton. Urquhart says: "I told Judge Manning nothing about the case whatever; communicated nothing to him except that the cotton had been taken by the United States, who had no right to it; he told Manning nothing more, but assumed he knew what was wanted (Rec. 320). There was no difficulty in knowing what Urquhart wanted; he wanted the cotton. With no information from his clients on which to base his action, Judge Manning must have found it difficult to get the cotton released. It appears, nevertheless, that he succeeded. Thereupon his connection with the matter ceased, and Messrs. Hyams & Jonas appeared as counsel (Rec. 320). The cotton released by the Treasury Agent was seized by the sheriff. The seizure was subsequently released, and it seems the cotton was sold and proceeds divided between Urquhart and Perkins. Cotton was very high in price at that time, and these proceeds must have amounted to some $12,000 or $15,000. Now, if the alle-

gations of the petition under which this cotton was seized were true, Perkins could not possibly have any right to any portion of the cotton or its proceeds. Mr. Urquhart, who was a bankrupt at that time, says; "I gave up half of the proceeds because I had some feeling for Mrs. Linton" (Rec. 321), but he did not give anything to Mrs. Linton. One-half of the proceeds were "given up" to Perkins, and as Urqnhart himself states Perkins did not represent himself to be the agent of Mrs. Linton, and Urquhart had no knowledge whatever that Perkins was acting for Mrs. Linton (Rec. 318). It is unnecessary to state Mrs. Linton had no knowledge of this transaction. The cotton was restored to Perkins, then seized by Urquhart and sold, and the proceeds divided between Perkins and Urquhart (Rec. 296).

Another singular thing about the matter is the fact developed by Urquhart's testimony, that the notes sued on by Urquhart in his original suit, No. 14,665, did not belong to him at the time suit was instituted, and he never thereafter acquired any interest in them. Of this there is no doubt, but it is difficult to tell who did own the notes. There were only three notes, Urquhart says. Mme. DeBoyne owned one; A. & M. Heine owned one; The Bank of Louisiana owned one; and Dr. Bush owned one. (Rec. 316, 317.) But no matter who owned them, Urquhart certainly did not. If the allegations under which the cotton was seized were true, the real owners were entitled to the proceeds of the cotton, and Urquhart had no right to give away their property.

Mr. Urquhart says his relations with the real owners of the notes were such that he felt at liberty to do as he pleased with their property, and after giving away half of it, that he accounted to Mme. DeBoyne, The Bank of Louisiana, and Dr. Bush for their portion. (Rec. 321.)

But it appears from Urquhart's testimony that Wells also owned the note which Dr. Bush is said to have owned. Urquhart says Gov. Wells purchased from Bush his note for $10,000; $3,000 cash (the balance presumably on time). (Rec. 299, 300.)

The interest of Wells is another mystery.

The record in the suit shows that the three notes sued on were withdrawn on the 15th April, 1866, by Hyams & Jonas, attorneys, "to be delivered to the order of J. M. Wells." (Rec. 408.)

Why were those notes given to Wells? Again, why was it that Wells, who, as stated in document filed with motion of October 31, 1865, "has an interest in the debt, though not a seizing creditor by name" (Rec. 402), did not receive any portion of the proceeds of the cotton? According to Urquhart, Wells got nothing, and Dr. Bush, who was not entitled to anything, got a portion of such proceeds. (Rec. 321.)

The whole thing is a tangled web of deceit and fraud.

It may be safely asserted that the motion filed October 31, 1865, the papers therein referred to and filed with it, and the hearsay testimony of Urquhart and Jonas as to said motion and papers, should be eliminated from the case as absolutely without effect as against appellants.

The testimony of C. L. C. Dupuy and of S. H. Kennedy, sworn for appellee, is, as has been shown in motion to suppress, entirely hearsay, so far as the same has any bearing on the questions at issue herein. (Rec. 325–338.)

The testimony of J. Madison Wells, offered by appellee, strongly corroborates that of witnesses for appellants. (Rec. 617–618, 628.) It must be remembered that Wells is a party to the suit, and interested in defeating the demand of the appellants. It appears from his testimony that in August, 1863, there was on the Quantico Planta-

tion between 1,400 and 1,800 bales of cotton, ginned and unginned, and that Wm. Morris was in possession as overseer. True, Wells states that he is under the impression the plantation, etc., was seized by the sheriff under an order of the Fourth District Court of New Orleans, and that he was made custodian of the property, and remained in charge until November, 1863, when he left the Parish, leaving his overseer in possession. But, as we have shown, it is simply impossible that any writ emanating from a court in New Orleans could have been issued to, or been executed by, the sheriff of Rapides Parish in August, 1863. The testimony of Wells shows beyond a doubt that a seizure was made in August, 1863; that at the time of such seizure Linton, through his employés, was in possession of the plantation and everything on it, and that he, Wells, was placed in possession by the sheriff as keeper after the seizure in 1863. The testimony of Wells, in detail, substantiates the sworn statement made by him in answer to the third cross-interrogatory propounded by appellee, in which he says he has no knowledge of any facts tending to show that the complainants should not recover judgment in this suit.

There is no other evidence adduced by the appellee, except the probate proceedings had in the parish of Rapides in succession of S. D. Linton, and certain extracts from the books of the Bank, all of which have been fully discussed in the motion to suppress (Rec. 114, 123). When the hearsay and otherwise inadmissible evidence offered by appellee is excluded, as it must be for reasons stated in our motions to suppress, there will remain only the mere denial of the Bank (unsustained by any evidence) to rebut the full, clear, and convincing evidence by which the case of appellants has been established.

The motion, and supplemental motion, made by the ap-

pellants to suppress certain evidence, and also parts of the answer of the Bank, are well taken and important. The reasons given by counsel in the motions will not be reprinted, but they are adopted here as a part of this brief (Rec. 114–123).

The appellee has also moved to suppress depositions, testimony, etc., and to these motions we wish now to call the attention of the Court (Rec. 124–126).

1. The deposition of Perkins was taken *de bene esse*, upon an affidavit of Marie P. Evans stating that the witness was ancient and infirm (Rec. 250). Counsel for appellee entered the general objection that the affidavit did not present any one of the causes which authorize depositions to be taken *de bene esse*. The affidavit states that Perkins was ancient and infirm. This, as we understand the practice, is one of the primary causes for examining a witness *de bene esse*. A witness who has attained the age of seventy years is within the rule. Perkins was seventy-two. (2 Story Eq. Jur. (13th Edn.) §1514; Rowe *v.* — 13 Ves. 261, and notes; Fitzhugh *v.* Lee, Ambl. 63; Pritchard *v.* Gee, 5 Madd. 364; Shelby *v.* — 13 Ves. 56.)

The next objection is to the statements of Perkins about the seizure of appellant's property at the suit of Cohen. Perkins paid the sheriff $11,000, and had the property released. The statement is as to the facts, and therefore competent (Rec. 254).

The third objection is important. It presents the question of the competency of the statements of J. Madison Wells, who was the keeper, under the appointment of the sheriff, of the property seized on the Quantico Plantation, and who is also a party to this suit (Rec. 60).

The statements of Wells are competent and admissible, (1), as a part of the *res gestæ*; (2), he is a party to the suit.

Aside from these conversations the witness has not stated

anything but facts. His statements do not contain what even purports to be the contents of any written paper or document (Rec. 254–5).

2. The witnesses Weed and McKee do not state anything as to the contents of the account-books of C. A. Weed & Co. They state facts about the cotton in controversy, and also repeat conversations with Wells concerning the ownership of the cotton (Rec. 238–9, 263–4). We have shown above that these statements of Wells are competent and admissible.

3. Mrs. Morris states the facts within her knowledge as they occurred. She was at home when the writs of seizure were served on her husband, and saw the notices, which were with her husband's letters for a long time, but she does not know what has become of them (Rec. 243–4–5). She gives the names of the parties in whose favor the writs of seizure were made, but nowhere states anything in relation to the contents of the papers. There can be no valid objection to the testimony of this witness.

4. Jackson Johnson likewise states facts within his own knowledge, and which are admissible for the reasons given above.

5. Clements states all the facts in relation to the seizure of the cotton on the Quantico Plantation by virtue of the writs in favor of the Bank and Urquhart. The writs were destroyed by fire, and what he and the other witnesses have said about them is admissible. It is the best evidence that can be obtained. The reasons given for suppressing his testimony are not sufficient. (Rec. 167–178; recalled, 228–232.)

6. The objection to the testimony of the several witnesses named in this paragraph of the motion is not well taken, for the reasons above given, namely, that it relates to the transaction by which the appellants' cotton was con-

verted to the Bank, and is therefore part of the *res gestæ*, and for the further reason that the statements of the parties to this suit in relation to the subject-matter are competent.

We pass the items seven and eight of the motion and call attention to the testimony of Mrs. Evans.

9. The objection to her testimony is upon the same grounds urged against the testimony of other witnesses. It is only necessary to state, from what has been said already, that what is objected to as hearsay is admissible as part of the *res gestæ*, or as the statements or admissions of parties to the suit. The statements and conversations of J. Madison Wells, D. Urquhart, and Lapeyre, who are parties to the suit, are admissible for this reason.

10. In regard to the witness Martin, it appears from the statement of the Commissioner that he died before his signature could be obtained. There is nothing to show that the deposition is not complete, or that there is anything irregular about it.

Having urged the admissibility of the testimony of the witnesses named, and for the reasons above stated, we now insist that it is admissible and competent for another reason.

The evidence in the record establishes conclusively, in our opinion, that the owners of the cotton in controversy were deprived of their property by fraud and conspiracy. The parties to the conspiracy were David Urquhart, J. Madison Wells, the Appellee-Bank, which was represented by J. M. Lapeyre, and subsequently the members of the firm of C. A. Weed & Co. became interested.

The evidence shows that Urquhart became incensed at Linton about a business transaction, and sued him on an account. He procured later on three of the notes given by Linton, *one of which he admits he got from the Bank, and*

that the Bank owned it. He proceeded in the court and obtained writs of seizure of the property mentioned in the mortgage. The cotton in controversy here was not named in the mortgage. The witnesses swear that one of these writs was in favor of the State Bank of Louisiana. There is every reason for believing this is so. The conspiracy to despoil the owners of their valuable property had now been inaugurated. J. Madison Wells was the owner of one of the notes in Urquhart's hands, but he was in charge of the plantation and property, and could not well become a party complainant. He therefore used Urquhart as one of his co-conspirators. Another of the notes belonged to Urquhart's sister, and he swears he could do as he pleased with her property. The other note belonged to the Bank, and was turned over to Urquhart to sue on. Thus the Bank, which had other interests, also became a party to the conspiracy. C. A. Weed & Co. were interested in their commissions as well as other ways when, later in the transaction, the cotton reached New Orleans.

Urquhart proceeded to sue on the notes of Wells and Mrs. DeBoyne in his own name. There seems to have been reasons and some authority for such a course. But it was not so with the note owned by the Bank. There are no reasons given, nor authority shown, for Urquhart suing on this note in his name, and it was not done. He probably brought suit on the notes owned by Wells and DeBoyne in his name, but he sued in the name of the Bank on the other one, and hence the witnesses are right, and to be believed when they state there were two writs of seizure, one in favor of the Bank and one in favor of Urquhart. The officer who served the writs, and the person who was present when they were served, and saw them, should be believed upon this question, especially when the writs have been destroyed. (*Best Prin. Ev.* (Am. edt.),

70, 217–18, 450.) The cotton was seized upon these writs. And the Bank was a party to the conspiracy, or by reason of the acts of Urquhart, who was either actually or impliedly its agent in the prosecution of the suit, in the issuance of the writs, and in the seizure of the cotton. (*Best, supra*, 490, 538.)

And when, in 1864, the cotton, which has been by reason of the seizure in the hands of J. Madison Wells, keeper, is brought to New Orleans on the steamboats belonging to Gen. Banks' Red River expedition, who are the persons who immediately surround it, and save it from going into the captured and abandoned property, and into the charge of the Government? The person who really saved it from this fate was Lapeyre, and he did so for the Bank. How? Because the Bank claimed a lien on it. What lien? The only answer to be made is, that it is the lien created by the seizure on the writ heretofore mentioned.

No other lien is mentioned. Urquhart is now away in the Confederate army, but Wells has brought down the cotton, and, as the evidence shows, has done his part well. He handled the money. It was a large sum. What became of it? The Bank had sufficient interest in it to keep it from the Government. It claimed a lien on it. Did it let Wells keep all the money, or did it get some of it on its alleged lien? The transaction was evidently satisfactorily settled. The Bank has not been heard to complain. It is plain the Bank got the money.

The testimony of Clements, Johnson, and Mrs. Morris is not contradicted. They testify to facts within their personal knowledge and observation. They were all present when the cotton was seized, and the notices thereof served on Morris, the overseer, who was in charge of the *Quantico Plantation*, the cotton which was seized, and the other property. Their statements are in all respects fully sub-

stantiated by J. Madison Wells in his affidavit. (Rec. 628–630.) Yet the judge who tried the case below discredits Clements without any reason, and disposes of the testimony of Mrs. Morris and Jackson by characterizing it as a "lucky find for complainants, if not for themselves." (Rec. 635.)

It will trouble any fair judicial mind to find the reasons for such characterization of this testimony. So far as the record discloses, these witnesses are of as high character as those who are given full credit by the judge, but who were either absent in the Confederate army during the entire rebellion, or were absolutely without knowledge of the facts in relation to the matters in controversy in this suit.

We think the evidence proves a conspiracy between Wells, Urquhart, the Bank, by its representative Lapeyre, and also such relations on the part of Weed and McKee to the cotton as to render all their statements and conversations in relation to the transaction admissible as evidence. For if any of these parties joined in the conspiracy after it was formed the acts of the others become their acts by adoption. (1 Green. Ev., 13th edn., 111; 3 *Ib.* 94; Phil. Ev., C. and H. notes, pt. 1, notes, 177–178.) The analysis of the testimony shows clearly a conspiracy, unfortunately successful thus far, to defraud Linton's estate out of this property, and the principles of law touching the evidence here produced are plain, and in fact elementary.

1st. The declarations of one of the conspirators are evidence against all of them.

2d. As the question of fraud is to be settled by various facts and items, scattered here and there, which of themselves trifling possibly, but united make a positive case, the rule as to *res gestæ* is not, in such inquiries, limited and restricted, but it is liberal and enlarged.

Green. Ev. and Phill. Ev. sup., and *Wood* v. *U. S.* 16 *Pet.* 342.
Castle v. *Bullard*, 23 *How.* 172.
Lincoln v. *Claflin*, 7 *Wall.* 132.
Butler v. *Watkins*, 13 *Ib.* 456.
Rea v. *Missouri*, 17 *Ib.* 532.
Graffam v. *Burgess*, 117 *U. S.* 180.
Kerr, F. & M. 384-5.
Best, supra.

This case comes here as a whole, upon the entire record, with no presumption at all in favor of the finding of facts by the court below, and this Court must pass upon them for itself, regardless of what that court did, as if the matter were original here, and do upon the whole case what should have been done by that court.

Gelston v. *Codwise*, 1 *Johns. Ch.* 189.
Ringold v. *Patterson*, 15 *Arks.* 209.
Woodruff v. *Core*, 23 *Ib.* 341.
Spear Fed. Judy, 259-60, *and cases cited.*

A. H. GARLAND,
H. J. MAY,
W. W. DUDLEY,
L. T. MICHENER,
For Appellants.

Office Supreme Court U. S.
FILED,
APR 22 1891
JAMES H. McKENNEY.

Supreme Court of the United States.

No.

Marie P. Evans and her husband, William R. Evans,

Appellants,

vs.

The State National Bank of New Orleans,

Appellees.

Brief in Behalf of the State National Bank of New Orleans, Appellee.

J. McConnell,
Counsel for the State National Bank.

N88

Supreme Court of the United States.

No.

Marie P. Evans and her husband, William R. Evans,

Appellants,

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The State National Bank of New Orleans,

Appellees.

Brief in Behalf of the State National Bank of New Orleans, Appellee.

Statement.

The complainant's demand in this case is not made in her own right.

She sues only as the instituted heir of her former deceased husband, Stephen Duncan Linton.

The succession of Stephen Duncan Linton has been duly opened, and as long ago as 1878 was definitively settled, by a

decree of the Supreme Court of Louisiana therein rendered, in a litigation, to which the defendant bank and the complainant, in her capacity as the "instituted heir" of Linton, were formal and opposing parties.

By that final decree the estate of Stephen Duncan Linton was declared to be "**more than TWENTY TIMES INSOLVENT,**" and the defendant bank (notwithstanding the opposition of the complainant) was recognized as a judgment and mortgage **creditor** of the succession of Linton, in the sum of $86,666.66, with eight per cent. interest thereon from 1862.

See Suc. of Linton, pages 453 to 605, inclusive.

Opinion Supreme Court of Louisiana, *R. p.* 605, reported in 31. *An. R., p.* 130.

The succession of Stephen Duncan Linton therefore, is a **judgment debtor** of the defendant bank, in a sum, adding the interest to date, of upwards of $300,000, which judgment remains unsatisfied, in whole or in part, to this day.

The complainant can take nothing as the "instituted heir" of a succession showing such a record.

The claim of the complainant against the defendant bank is utterly unfounded, and was so decided to be by the decree of the Circuit Court, from which the present appeal has been taken.

The demand made by the complainant in this suit, as appears from the original, and second supplemental bills, is, in amount, exclusive of interest, more than four times the value of the capital stock of the defendant bank. And yet, in

a suit presenting a claim of such nominal magnitude, from an adverse judgment rendered in the Circuit Court, two appeals had to be taken by her, the first of which was "**not prosecuted,**" and the second was taken, only after such prolonged delay, as to challenge the motion to dismiss, found in *134 U. S., 330.*

The claim is for the alleged value of certain "farming utensils," "cotton" and "other property," said to have been, at some time during the period of the late civil war, on a plantation on the Red River, about eleven miles from the town of Alexandria, known as the "Quantico" plantation.

This plantation belonged to Stephen Duncan Linton, the first husband of the complainant, and her demand for the alleged damages, as above stated, is in the character of instituted heir of Linton, who died in France, in December, 1867.

The record shows, that previous to the institution by her of the present suit, which was in 1876, the complainant had, in 1871, brought a suit before the United States Court of Claims, as heir of her father, Jehu Perkins, for the value of certain sugar, live-stock, corn and other property, alleged by her to have been taken by the U. S. army, from the "Richland" plantation, near Baton Rouge, which damages she first minutely detailed at a valuation of $272,590, but subsequently increased, with like minuteness of detail, to $495,355. (*R.* 342. 346.)

The Court of Claims, in disallowing this claim, as they did, rendered an elaborate report which is in evidence. They said: The evidence * * "is overwhelmingly against the claim." * * "It shows that the claim has no existence, in fact." * * "The claim, in all its vast proportions, vanishes

into a creation of the brain." "We think the value of all the property taken from this plantation for army use is less than one thousand dollars." "Strong words are used in this report; the facts justify such use. Less expressive language fails to characterise the claim." (*R. p.* 397.)

The report of the commission was made to Congress, and was accompanied by their conclusion in these words:

"Claim No. 3107, Marie P. Evans, of Orleans Parish, "Louisiana. Total amount claimed in original petition, "$272,590; in amended petition, $495,355. **THE CLAIM "IS WHOLLY DISALLOWED."**

This disastrous rejection of the demand for damages on the "Richland" plantation, occurred January 16, 1875. Nothing daunted thereby, however, on the 11th of January, 1876, just one year later, the present action followed for damages somewhat similar in kind, alleged to have been sustained on the "Quantico" plantation. The cause of the damage here is alleged to be, **a seizure under judicial process** said to have been **unauthorized.**

It was between 1861 and 1865 that the events are alleged to have transpired on the "Quantico" plantation, which are said to have occasioned the damages complained of, and yet no suit was instituted for the alleged damages until 1876! Why was this delay? Is such delay consistent with the idea that the claim was a **real** one? Considered as a case requiring **proof** and **testimony**, it would certainly have been better for the **just** interests of both sides, to have brought the suit earlier—while the facts were fresh in the memories of men.

The length of time that this cause has been pending—the length and character of the pleadings—the size of the record —the "multitude of counsellors" for the complainants, whose names appear in the record, but have disappeared, *seriatim* from the record as the case progressed; the very high figure at which the alleged damages are estimated, reaching into the millions—these are some of the salient features of the case, which, unexplained, would suggest that there is something of reality in this suit, but when the facts in evidence are considered and explained, the Court will find demonstrated, the utterly unreal, fictitious, and unfounded character of the demand, as against the defendant bank.

Such explanation of the facts being essential, we proceed to state those most important, in the order of their occurrence, and will do so as briefly as may be consistent with their proper and intelligible presentation.

The Most Important Facts of the Case, stated in Chronological Order.

On the 27th of December, 1859, by act before Guyol, Notary, Stephen Duncan Linton, then husband of the complainant, borrowed the sum of $130,000 from W. & D. Urquhart, a commercial firm in New Orleans, at that time of very high standing and wealth. As evidence of this loan, Linton gave his twelve notes, each for the sum of $10,833.33⅓ to his own order and by him endorsed, maturing, 10 | 13th January, 10 | 13th February, and 10 | 13th and 15 | 18th March of the years 1861, 1862 and 1863, respectively. Thus, four notes only, matured in each of said years. To secure the payment of said twelve notes, Linton gave a mortgage on the "Quantico" plantation, its improvements, stock and farming utensils, etc., and 195 slaves thereon. As further security, Linton gave by the same act, a special pledge upon all the crops that should be raised and gathered on the Quantico plantation, during the existence of the mortgage, and also bound himself and his heirs, to consign and ship all the said crops, to the said lenders, W. & D. Urquhart, for sale in New Orleans, it being well understood and agreed, that the said firm should be entitled to the usual mercantile commissions, charges, etc., upon all crops sold by them.

See act of mortgage, *R.* 428.

W. & D. Urquhart guaranteed the payment of these notes by endorsing them severally and then realized on them either by discount or sale.

Before the first series of these notes matured in 1861 the Urquharts discovered that Linton, in violation of his agreement, was shipping his cotton to other merchants in New Orleans, and thereupon, David Urquhart, (to use his own expression, *R*, 293), "determined to **put the screws on**" Linton. This he did by borrowing (he says, *R. p.*, 317), three of the four notes, which matured in the year 1861; one from Mrs. DuBoyne (his sister), another from Mr. Busch, and the third from the **BANK OF LOUISIANA** (not the **Louisiana State Bank**, the defendant herein, but a totally different banking institution.)

The ownership of these three notes is thus definitively settled by Mr. Urquhart. He says: "Ostensibly, they were held by us, but these parties were really the owners of the note —the Bank of Louisiana, Mr. Busch and Mrs. DeBoyne." (R. p. 317.) On the 15th of March, 1861, David Urquhart, in his own name, through J. K. Elgee, as his attorney, brought the suit, No. 14,665, in the Fourth District Court of New Orleans, *via executiva*, and an order of seizure and sale issued, directed to the Sheriff of the Parish of Rapides, under which the Quantico plantation was **seized**. (See R., p. 398, *et seq.*)

The fourth mortgage note, of the series falling due in 1861, was owned by A. Cohen, and at Urquhart's instance, Cohen brought the suit, No. 14,708, in the same Court.

See testimony of David Urquhart, *R.*, *p.* 293, 294.

See also record of the Cohen suit, *R.*, *p.* 409.

Cohen was paid the amount of his note in gold, and his seizure was released.

Testimony, Urquhart, *p.* 293.

Testimony, Henry Perkins, p. 254.

On the 20th April, 1861, Linton filed the suit, No. 14,846, in the Fourth District Court of New Orleans, against D. Urquhart, and obtained an *ex parte* order on the Sheriff of the Parish of Rapides, to suspend the sale of the plantation "until the further order of the Court."

See *R.*, *pp.* 422–426.

The Louisiana State Bank, as already stated, had no interest or ownership whatever, in any one of the above-mentioned four notes which fell due in 1861, and upon which notes only, the judicial proceedings complained of were taken.

The interest of the Louisiana State Bank was confined entirely to the remaining eight notes, which matured, four in 1862, and four in 1863.

In order that the Court may have before it a clear and condensed exhibit of the ownership and other details of these several mortgage notes, (remembering that the one held by A. Cohen and upon which he had sued had been paid), we reproduce here an extract from the "tableau of debts," which was filed by O. K. Hawley, administrator, in the succession of Linton in 1871, after his death by the administrator of his estate, which will be found in this record at p. 474.

TABLEAU OF DEBTS.

Succession of S. D. Linton, No. 1171.

MORTGAGE DEBT.

1. **Louisiana State Bank**, viz.:

One note bearing eight per cent. interest.

From January 13, 1862, for	$10,833.33⅓
From February 13, 1862, for	10,833.33⅓
From March 13, 1862, for	10,833.33⅓
From March 13, 1862, for	10,833.33⅓
From January 13, 1863, for	10,833.33⅓
From February 13, 1863, for	10,833.33⅓
From March 13, 1863, for	10,833.33⅓
From March 13, 1863, for	10,833.33⅓

2. **Bank of Louisiana**, viz.:

One note bearing eight per cent. interest.

From February 13, 1861, for	$10,833.33⅓

3. **Madame Anna De Boigne**, viz.:

One note bearing eight per cent. interest.

From January 12, 1861, for	$10,833.33⅓

4. **Eli Bush**, viz.:

One note bearing eight per cent. interest.

From March 13, 1861, for	$10,833.33⅓

On page 327, Mr. Dupuy, cashier, explains fully how and where the defendant bank, became first the holder and subsequently owner of the said eight mortgage notes, and it is

certain that not one of these eight mortgages notes held by the defendant bank were ever sued on until September 26, 1866, when for the first time, suit No. 17,703 was brought on them, *via ordinaria*, in the Fourth District Court of New Orleans, by the defendant bank, against S. D. Linton.

This fact is an absolute negation of the complainant's case, because if a suit had been brought in the Parish of Rapides, as is pretended was done by the defendant's bank, against Linton, it would have been on one of these eight notes, as it is not pretended that the bank ever held any obligations of Linton, other than these eight mortgage notes, and the seizures complained of were all alleged to have been made long prior to 1866.

When on September 26, 1866, the defendants' bank brought this suit against S. D. Linton, on the said eight mortgage notes, it appeared that he was in France and had become insane, and the complainant, then his wife, acting as his provisional administrator, accepted service of the suit and waived citation of the petition (see *R.*, *p.* 428 *et seq.*) and judgment was rendered June 1, 1867, in favor of the bank for the amount of the eight mortgage notes to wit, $86,666.66⅔ with interests and costs. (see *R.*, *p.* 440).

In 1867, but subsequently to the rendition of this judgment, Linton died in France, and his succession was opened in the Parish of Rapides, in 1868.

Nothing was done with the judgment obtained by the defendant bank against Linton, as above stated, in 1866, except to record the judgment, and then bring suit May 11, 1877, against the legal representative of his estate, J. M. Wells, Jr., administrator, to have the judgment revived, and prevent

its becoming prescribed. See petition for this purpose, R. pages, 442–444).

After much wrangling among the creditors of the estate of Linton (as is shown by the voluminous record in evidence herein), on the seventeenth of March, 1877, the "Quantico" plantation was sold and bought at Sheriff's sale by C. L. C. Dupuy, for the price of $5,500. (R. 539–542.)

Five days later, to wit, on the twenty-second of March, 1877, Dupuy sold the plantation by act before Guyol, Notary, to C. L. Robinson. In this act the complainant, Mrs. Evans, duly authorized and assisted by her husband, intervened, and made an express and formal ratification of the sale, and also made a renunciation of all her rights (*quoad* said plantation) both as widow in community and as "universal legatee" of Stephen Duncan Linton. (See R. pages, 568, 569.)

On the 29th of April, 1878, the Supreme Court of Louisiana rendered an opinion and decree in the matter of the succession of Linton, in which the $5,500 realized from the sale of the Quantico plantation was distributed, from which it appears that the defendant bank received nothing, although it was a mortgage creditor in the sum of $86,666.66⅔. (*R., pp.* 605–608.) The following extract from this opinion shows the pecuniary condition of the estate of Linton at that time. The Court said: "The succession of Linton appears to be more than **TWENTY TIMES INSOLVENT**," and we are bound to presume was completely insolvent from the day on which it was opened. It is and

ever was the property of its creditors. (*R.*, *p.* 606. See this opinion reported in 31 *An. R.* 130.)

It is thus shown that the defendant bank, instead of being the debtor of the complainant as the instituted heir of S. D. Linton, is the unfortunate creditor of Linton, whose estate is thus pronounced by the supreme judicial tribunal of the State "more than twenty times insolvent," and the defendant bank is the loser of the entire amount of hard cash, which it invested in said eight mortgage notes of Linton, for $86,666.66⅔, exclusive of interest.

It is true that the bank through Mr. Dupuy (who was its cashier) bought in the plantation at the succession sale for $5,500, and that Dupuy sold it to Robinson subsequently for $12,000. But as Mrs. Evans ratified this sale in the most formal manner, as we have shown above, it is quite clear that she participated, satisfactorily to herself, in the proceeds. (See *R.*, *p.* 568, 569.)

Let us now turn the attention of the Court to the events that transpired on the "Quantico" plantation, and show what was done there, in the spring of 1863, by S. D. Linton and the complainant, then his wife, and her father, John Perkins, and her uncle, Henry Perkins.

This review will bring to the notice of the Court some important facts shown by complainant's own witnesses, utterly inconsistent with the charge in the second amended bill (*R.*, *p.* 55), to the effect that the defendant bank received the proceeds of 1800 bales of cotton, alleged to have been brought

to New Orleans by J. Madison Wells in 1864, while he was custodian of the "Quantico" plantation.

The complainant and her then husband, S. D. Linton, and her father, Jehu Perkins, and uncle, Henry Perkins, were on the Quantico plantation in the spring of 1863, and on the retreat of the army of Gen. Banks, Linton concluded to go to Europe. He thereupon sold the cotton on the Quantico plantation, to McKee, an agent of the Confederate Government, for $80,000, which amount was paid to him by McKee.

(See testimony of R. C. Hutchinson, complainant's witness, who was in the U. S. Secret Service, during the war. *R.* 150-153.)

Linton and his wife, and the Perkins, then went to Texas, taking with them such of the slaves as they could, and from the statement of the complainant herself, probably sold them there.

(See testimony of Mrs. Evans, *R. p.* 365, 366.)

On arrival in Texas, Linton must have had ample funds, with which he speculated in cotton, for his then wife, the complainant, testifies as follows on that point:

"He was dealing in cotton in Texas," and "he had **LARGE COTTON TRANSACTIONS** in Texas."

(See testimony of Mrs. Evans, *R., p.* 197.)

After Linton had finished "dealing in cotton," and had concluded his "large cotton transactions" in Texas, he went to France, where he died.

Whether he "realized" handsomely or not from these "cotton transactions," the proof does not show, but the record

does show that, but one short year previously he had borrowed $130,000, by mortgaging his plantation, then sold the cotton on "Quantico" to McKee for $80,000 in Confederate money, and it was, no doubt, with these funds (all of which belonged to his creditors) he carried on "large cotton transactions," in Texas, the results of which have not to this day been made known to the creditors.

After they had gone to Texas it appears, that although Wells was custodian under the Urquhart seizure, an important agreement was entered into between Wells, and Jehu and Henry Perkins, the complainants, father and uncle, in regard to shipping the cotton to New Orleans. H. Perkins says he went to the plantation in March, 1864, and Wells "agreed to take the cotton to New Orleans if I would allow him twenty-five per cent., he paying all expenses, which I agreed to give him, or to do." (R. p. 254.)

This agreement was reduced to the shape of a written contract between Wells, and Henry Perkins as the agent of the complainant. Under this agreement it seems, that some cotton was brought by Wells from Quantico plantation (together with cotton belonging to other parties) to the City of New Orleans, and sold by C. A. Weed & Co., and the proceeds paid over to Wells, who simply pocketed the money, and, so far as the record shows, has retained it to this day, except that he surrendered twelve bales of cotton to Henry Perkins. (*R.* 255.)

Mr. J. E. Wallace, a witness for complainant, gives the substance of the agreement, and states, that he had this agreement in his personal custody for a long period. He was a lawyer, and as such employed to make Wells account for three-fourths of the proceeds of the cotton. He testifies he

could accomplish nothing with Wells, because of his power and position at the time as Governor of the State. (See testimony of J. E. Wallace, R. p. 149.)

With this brief review of the most important facts, we invite the attention of the Court to

The Pleadings.

The complainant has filed an original and two supplemental bills.

In the original bill, David Urquhart is presented as the principal defendant.

It avers, in substance, that on or about the fifteenth of March, 1861, the defendant, David Urquhart, under some proceeding unknown to the complainants, but which they believe to be an unauthorized judicial process, seized and took possession of (Quantico) plantation * * and so held, and continued the same, until on about the twentieth of October, 1866; that during the time of such occupation by said David Urquhart, and on or about the twenty-first of August, 1863, the defendant, the State National Bank, then known as the Louisiana State Bank, joined with the said defendant, David Urquhart, in the possession and occupancy of the said above-mentioned and described piece or parcel of land, and continued in such possession and occupancy until on or about the day of January, 1869.

The bill then proceeds to claim, first from the defendant, David Urquhart, alone, the sum of $750,000 "for farming utensils, cotton, and other property."

Then claims $700,000 from both defendants for "other stock, farming utensils, cotton, and property, etc."

Then avers that these two co-defendants, raised crops on the "Quantico" place, and so realized $150,000.

The bill repeatedly describes these defendants as **mortgage creditors** of Linton.

Discovery is prayed for, and interrogatories propounded to the defendants.

(*b.*) The first supplemental bill (*R.* 23) was filed June 3, 1876, and applied for an injunction, to restrain the sale of the "Quantico" plantation, until the further order of Court.

(*c.*) The second supplemental bill, (*R.* 45) was filed March 13, 1878.

It re-affirms all the allegations, charges, statements, averments, and interrogatories, of the original bill. It makes parties to the bill the heirs of J. M. Lapeyre, who had been president of the defendant bank, and who, from the 17th of June, 1863, to the 3d of February, 1866, was one of the military commissioners and liquidators of the bank.

This bill (on page *R.* 55) charges the defendant bank with having taken into their possession 1,800 bales of cotton, of an average weight of 500 pounds per bale "which (it is alleged) they converted into money and now have in their possession." The value of this cotton is placed (in the bill) at one dollar and sixty cents per pound (*R.* 56) which for the 1,800 bales would amount, at the weight stated, to $1,440,000.

To this bill an amendment was filed June 16, 1879, charging that J. M. Lapeyre converted this cotton, or portions of it to his own use. (*R. pp.* 72, 73.)

This amendment was made, because the Circuit Court maintained a demurrer to the bill, filed by the heirs of Lapeyre. (*R. pp.* 71, 72.)

After this amendment was filed, distinctly charging Lapeyre with possession and conversion of the cotton to his own use, "and that he so held and had possession thereof at the time of his death," the complainant, by her *laches* permitted the heirs of Lapeyre, to procure an order dismissing the bill as to them, "for want of prosecution."

(See motion to dismiss, *R.* 103.)

(And final order thereon, *R.* 112.)

A vigorous effort was made to rescind this order, but was ineffectual.

(See *R.* 107–112.)

We would observe in this connection, that the only testimony adduced, by which it is attempted to connect the bank with any cotton as coming from Quantico plantation, is through conversations attributed to Lapeyre. This it will not be denied was exclusively during the period Lapeyre was—not President—but a military commissioner of the bank. If then the complainant had any case in this connection, it was against Lapeyre—not the bank, and by her own *laches* she has permitted the heirs of Lapeyre to elude pursuit, by dismissing her bill "for want of prosecution," and this after the amendment as above shown, (*R.* 71, 72,) she had charged Lapeyre directly with liability to her. In another connection we will recur to this subject, and from the evidence show, that if she had any case under the second supplemental bill, it was against Lapeyre and not against the bank.

The pleadings of the defendant bank will be found in the record as follows:

April 3, 1876. A plea. (*R.*, 7.)

May 18, 1876. An amended plea. (*R.*, 17.)

March 3, 1877. Plea to bill and supplemental bill. (*R.*, 35.)

June 3, 1878. Demurrer plea and answer. (*R.*, 63.)

On the 7th of November, 1881, the defendant bank filed her **answer**, with answers to interrogatories and exhibits.

This answer was required to be given not only under oath, but under the **corporate seal** of the bank. (*R.*, 58.)

It is a full and complete answer to the original, and both supplemental bills, and fully negatives complainant's allegations, and refutes the scandalous impertinent and gratuitous charges of the second supplemental bill.

Under the rules governing the practice of this Court in equity causes, being responsive to this bill of discovery, and required to be given under oath, and also under its corporate seal, **THIS ANSWER OF THE BANK BECOMES EVIDENCE IN DEFENDANT'S BEHALF, and for this reason,** as well as for convenience of reference, we produce here it in full.

Answer of the Defendant Bank.

"The answer of the State National Bank of New Orleans, "one of the defendants to the bill of complaint and supple- "mental bills of complaint of Marie P. Evans and her husband, "William R. Evans, complainants.

"This defendant now, and at all times hereafter, saving "to itself all, and all manner of benefit, or advantage of ex- "ception or otherwise, that can or might be taken to the many "errors, uncertainties, and imperfections in the said bills con- "tained, and not waiving or abandoning the demurrer and "plea herein, heretofore filed, but relying and insisting thereon, "and herein, and hereby reaverring and reiterating all the "averments and details in said plea contained, as fully as if "they were herein specifically incorporated and set forth, for "answer to said bills and supplemental bills, or to so much "thereof as this defendant is advised it is material or neces- "sary for it to answer unto, answering, saith:

"This respondent admits it to be true, as in the original "bill averred, that Stephen D. Linton, in the bill mentioned, "was before, at, and during the several dates and times stated, "the owner of the Quantico plantation, in the bill described, "and that he continued so to be until his death, which respon- "dent is informed and believes occurred on or about the 15th "of December, 1867; but this respondent does not admit "Linton was continuously the possessor of the said planta- "tion from the dates and times averred in the bill to his death, "in December, 1867, but is informed and believes, and there- "fore avers, that from about the month of March, 1861, until "the date of said Linton's death, in December, 1867, the said "Quantico plantation was continuously in the possession of "the Sheriff of the Parish of Rapides, or of his keepers under "writs of execution in his hands, to which more specific "reference will be hereinafter made.

"For answer to so much of said original bill as related to "an alleged will and testament of said Linton, on the 20th of "December, 1863, devising and bequeathing all of his real and "personal estate to the complainant, Marie P. Evans, and to the "alleged probate of said will, before the proper tribunal of the

" Parish of Rapides, and to the alleged recognition by the said " Court, of the said Marie P. Evans, as universal legatee, and " sole heir of said Linton, respondent adopts and reiterates for " answer thereto, the plea to said original bill, filed herein on " the 3d of April, 1876. And the amendment thereto filed, " May 18th, 1876. And remaining of record in the cause, " and which respondent makes part of this answer.

" Respondent is informed and believes that on or about " the 15th of March, 1861, the sheriff of the Parish of Rapides, " under a writ of seizure and sale, to him addressed by the " then Fourth District Court of New Orleans, in the suit No. " 14,665, of the docket entitled, *David Urquhart* vs. *Stephen* " *Duncan Linton*, seized and took possession of said Quantico " plantation; and respondent is informed and believes and so " says, that the process under which the said sheriff seized said " plantation, was not an unauthorized, judicial process, but was " regularly and lawfully issued and regularly and lawfully " executed by the sheriff; but this respondent avers that, be " this as it may, it is in no way accountable, to complainant for " old alleged acts of the said Urquhart in the premises, or of " the sheriff or of his deputies, respondent not being in any " way a party to said proceeding.

" For answer to so much of said bill as avers that during " the alleged occupancy of said plantation by said Urquhart, " and on or about the 21st of August, 1863, the State National " Bank of New Orleans, then known as the Louisiana State " Bank, joined with the said Urquhart, in the possession and " occupancy of the said plantation and continued in such " occupancy and possession, until January, 1869; and that " during such alleged joint occupancy, stock, farming utensils, " cotton, and other property connected therewith, came into " the possession and under the control of said alleged joint " occupants, to the value of seven hundred and fifty thousand " dollars; and that during the said alleged joint occupancy " by the said defendants, the said property to the value of " seven hundred thousand dollars, and other property of the " value of seven hundred and fifty thousand dollars, alleged to " have been under the control and in the possession of said " Unquhart, prior to said alleged joint occupancy, the whole " alleged to amount to one million four hundred thousand " dollars, was used and disposed of by said defendants, and " the proceeds thereof retained and kept, or otherwise misap-

"propriated; and that during the period of time during which "the said defendants, are so alleged to have had the control "and possession of said property, they had the entire and "exclusive control of the same and exercised the rights and "privileges of mortgagees, in possession of the land and "premises, and as such entered, into and engaged in the "business of raising crops of cotton and other farming and "planting business, from which they realized large sums of "money, averred by complainants, upon information and "belief, to amount to one hundred and fifty thousand dollars; "and that they are and were entitled to the use of said "property and the retention of the proceeds of the sales of "the same as the holders of certain mortgage notes made by "the said Stephen D. Linton, and that by virtue thereof, with-"out the adjudication of a proper legal tribunal, giving the "said defendants the right of possession of said property, they "were entitled to enter into the entire and exclusive control "and occupancy of the said land and premises and the appro-"priation of the property situated therein, and the product of "the said land during the occupancy of said defendants; this "respondent answers and says that it is true, that the "Louisiana State Bank claimed and its successor, the State "National Bank claimed and claims still, that they were, as "holders of certain notes of said Stephen D. Linton, secured "by mortgage on the Quantico plantation, they were and are "entitled through the Courts, to enforce their rights as "mortgagees, according to law and not otherwise; and this "respondent says that as to the late Louisiana State Bank and "its successor, the State National Bank of New Orleans, all "of said averments are false, from beginning to end, in every "particular, and in every sense and that there is not a word of "truth in them; but the truth of the matter in regard to the "relation of the said Louisiana State Bank and the said State "National Bank of New Orleans, to the said Stephen D. "Linton, and the said Quantico plantation, and the said Marie "P. Evans, was as will be hereinafter set forth.

"To the first Supplementary Bill of Complaint, herein "filed on the 3d of June, 1876, and to the original bill this "respondent filed, on the 3d of March, 1877, a plea, all the "averments of which he now reiterates, as part of his answer "to the said original and first supplemental bill; and respon-"dent is advised that no further answer is required to said

"original and supplemental bills than the said plea, which is "on file and of record in the cause, be allowed to stand as a "part of the answer of this respondent, to the stating parts "of said bills and first supplemental bill; the interrogatories, "in said bills contained, to be hereinafter answered.

"And this respondent further answering says, that to the "second supplemental bill herein filed on March 13, 1878, as "well as to the original and first supplemental bills, this respon-"dent, on the 3d of June, 1878, filed a demurrer, plea, and "answer, all the averments and details of which, respondent "now reiterates, and respondent prays that said demurrer, "plea and answer, now on file and of record in the cause be "allowed to stand as part of respondent's answer to the orig-"inal and first and second supplemental bills.

"Further answering, the respondent says that the truth of "the matter in regard to the relation of the late Louisiana "State Bank and its successor, the State National Bank of "New Orleans, to the late Stephen D. Linton, the 'Quantico' "plantation, and Marie P. Evans, is as follows:

"On the 27th of December, 1859, the said Stephen Dun-"can Linton appeared before Theodore Guyol, a notary "public for the Parish of Orleans, and acknowledged himself "to be indebted to the firm of W. & D. Urquhart, of New "Orleans, in the sum of one hundred and thirty thousand "dollars, borrowed money, for which he furnished his twelve "promissory notes for sum of $10,844.33⅓ each, drawn to "the order of and endorsed by himself, dated 27th December, "1859, payable respectively on the 10th of January, 10th of "February and 10th and 15th days of March in each of the "years, 1861, 1862 and 1863, with interest from maturity at "eight per cent. per annum. And in case it should become "necessary to institute legal proceedings for the recovery, he "bound himself to pay the fees of the attorney employed "for that purpose, which were fixed at five per cent. on the "amount sued for. And to secure the payment of the notes, "with eventual interest, he mortgaged to W. & D. Urquhart, "to secure to the benefit of all future holders of the notes, not "only the 'Quantico' plantation described in the bill, with all "the buildings and improvements thereon, the engines, "machinery, apparatus, stock, cattle, horses, mules, utensils, "and implements of husbandry on the plantation, but also one "hundred and ninety-three slaves.

"On the 15th of March, 1861, David Urquhart brought "suit for executory process, in the then Fourth District Court "of New Orleans against Stephen D. Linton, on the three "notes, which had then matured, viz.: the notes maturing "on the 13th of January, 13th of February and 13th of "March, which had been protested for non-payment at "maturity, and obtained on the same day an order of seizure "and sale of the mortgaged property for so much cash as "would pay and satisfy the seizing creditor's demand, in prin- "cipal, interest and costs, and on such terms of credit as would "correspond with the maturities of the remaining notes set "forth in the act of mortgage.

"Respondent is informed and believes, and therefore "says, that under the writ of seizure and sale in said suit, the "sheriff of the Parish of Rapides, seized the mortgaged "property and advertised it for sale according to law, but "that the sale was stayed, by the passage of a stay law, by "the then Legislature of the State, but the sheriff as in duty "bound maintained the possession and control of the property "under seizure by having a keeper, thereon; that while the "execution of said writ of seizure and sale in the hands of "the sheriff was then suspended, the Court House of the "Parish of Rapides was destroyed by fire, with all the "records, both of the sheriff and of the clerk of said parish, "including the said order of said seizure and sale, thereby "rendering it impossible for the sheriff either to execute or "make return upon the same and that matters remained in "this condition until October 6, 1866, when upon a supple- "mental petition being filed bringing these matters to the "knowledge of the Court, an alias order of seizure and sale "of the mortgaged property, except the slaves, who had been "emancipated, was granted, and under an alias writ the "property was again advertised to be sold, but on the 21st. of "November, 1865, and before sale, the writ was returned by "order of plaintiff's attorney, and on the 20th of October, "1866, on motion of plaintiff's attorney, the suit was "discontinued.

"Respondent says that on the face of the proceedings in "said suit, nothing appears to have been done therein that was "not clearly according to law for the enforcement of the "rights of the plaintiff therein as holder of the notes of "Stephen D. Linton, secured by mortgage on the Quantico

" plantation described in the petition, but respondent further " says, that, be that as it may, neither the Louisiana State " Bank, nor its successor, the State National Bank of New " Orleans, are in anyway responsible, or accountable to any- " one, for anything done therein, as they were no parties " thereto, either directly or indirectly, at the time of the insti- " tution of said suit for executory process, on the 15th of " March, 1861, by David Urquhart against Stephen D. Linton, " the Louisiana State Bank had discounted and held as owner " three of the notes of Stephen D. Linton, for $10,833.33⅓ " each, secured by mortgage on the Quantico plantation, de- " scribed in the act before Theo. Guyal, Notary Public, which " had then matured, none of the said notes so as aforesaid " held by said bank had matured; the maturities of the three " of said notes, held by said bank, being respectively, 10–13 " February, 1862; 10–13, March, 1862, and 15–18, March, " 1862, and the maturity of the five notes so, as aforesaid held " as collateral by said bank, being 10–13 January, 1862; " 10–13 January, 1863; 10–13 February, 1863; 10–13 March, " 1863, and 15–18 March, 1863.

" Respondent says that prior to the 17th of June, 1863, " no proceedings had been taken by said Louisiana State Bank " to enforce the payment of said notes by enforcement of the " mortgages against the Quantico plantation, but that on that " day the bank continued to hold said note by the titles above " stated.

" Respondent says that on the said 17th day of June, " 1863, and prior to the 21st of August, 1863, at or about " which time it is alleged in the said original bill herein, that " the Louisiana State bank joined with the said David Urqu- " hart, in the occupancy and possession of said Quantico " plantation, and came into possession jointly with said Urqu- " hart, of cotton and other property belonging to said planta- " tion, of the value of over one million four hundred thousand " dollars, which the said bill avers they converted to their own " use, all the assets of said bank, including the said eight notes " of Stephen D. Linton secured by mortgage on the Quantico " plantation, were taken out of the possession and control of " the officers, directors and stockholders of said bank, and the " entire control and management of said bank placed in the " hands of a military commission by force of a military order, " of which the following is a copy:

"'HEAD-QUARTERS DEP'M'T OF THE GULF,
19TH ARMY CORPS.
BEFORE PORT HUDSON, 11th of June, 1863.

EXTRACT.

SPECIAL ORDERS
No. 138.

* * * * * * * *

"Satisfied from the report of the Louisiana State Bank "made to the Provost-Marshal General, in pursuance of special "order No. 87, that the said bank is insolvent, the command- "ing general hereby appoints Colonel Charles C. Wright, "160th New York Volunteers; A. Miltenberger and J. M. "Lapeyre, Commissioners, to effect the liquidation of said "Louisiana State Bank, to convert into cash as speedily as "may be, all the assets of that corporation, including the sums "that may have remained unpaid by stockholders, upon their "respective shares of the capital stock, and after providing for "the payment of the bill-holders, to distribute the same as "now provided by law in case of insolvencies of individuals.

"The Commissioners herein named will take possession "of the effects of the Louisiana State Bank and enter on the "discharge of their duties immediately.

"By command of Major General Banks.

"(Signed) RICHARD B. IRWIN,
"*A. A. General.*

"Official copy.

"(Signed) HENRY L. PIERSON, JR.,
"*Captain and A. A. G.*

"Respondent avers that the proceedings had by the "Board of Directors of the Louisiana State Bank, when the "said order was communicated to them, are correctly set "forth in the record of the proceedings of said Board Book E, "Folios 235, 236 and 237, as follows:

"Special meeting of Wednesday, 17th June, 1863.

"Present: J. M. Lapeyre. President; Blanc, Brother, "Brudin, Gelpi, Kennedy and Olivier.

"The President laid before the Board the following order "handed to him yesterday, which was read and ordered to be "spread on the minutes."

"(Here follows a copy of the military order, No. 138, as "given above.)

" Whereupon the Board unanimously declared that while " submitting to the above order, which they have no power to " resist, they deem it unjust, oppressive, and ruinous, and so " solemnly protest against it on behalf of the stockholders.

" An inventory of the assets of the bank w s ordered to " be made, with a view to hand the same to the commissioners " appointed by the order, and the President was at the same " time requested to exert all honorable means to have the " above order rescinded or so modified as to allow the liquida- " tion of the bank to be effected in a manner less disastrous " than the one pointed out by the order.

" After which the Board adjourned.

"(Signed) J. M. LAPEYRE,
" *President.*

"(Signed) L. BERNARD,
" *Cashier.*

" Respondent avers, that under said military order of the " 11th of June, 1863, the military commission hereby appointed " on the 17th of June, 1863, took possession of all the assets " of the said bank, and assumed entire control and manage- " ment of all its affairs, and continued in the exercise of such " control and management until the third day of February, " 1866, when the assets and management of said bank were " surrendered to the directors and stockholders thereof.

" Respondent shows that most of the alleged acts of said " bank, complained of in said bills of complaint, are averred " therein to have occurred at dates which are between the 17th " of June, 1863, when the bank was taken possession of by " the said military commission and the 3d of February, 1866, " when it was surrendered to the directors and stockholders.

" Respondent does not believe, and has no reason to " believe, that any of the losses averred in the bill of com- " plaint to have been sustained by the owner of Quantico " plantation during the period from the seventeenth of June, " 1863, to the third of February, 1866, if sustained at all, were " occasioned by the acts or neglect of the military commission " in charge of the affairs of the bank, but **avers upon infor- " mation and belief that the present attempt to hold the " State National Bank of New Orleans, as successor of " the Louisiana State Bank, liable for said alleged losses, " averred to have been sustained during the period during**

" which the affairs, of the Louisiana State Bank, were " under the control and management of said military com- " mission, IS MADE IN PURSUANCE OF A FRAUD- " ULENT SCHEME TO UNLAWFULLY EXTORT " MONEY FROM RESPONDENTS BY MEANS OF " TEDIOUS AND VEXATIOUS LITIGATION.

" Respondent says that as to the larger portion of said " alleged losses, it is manifest that the complainant, Marie P. " Evans, knew, before this suit was brought, that respondent's " were in no wise liable therefor, from the fact that before the " board of commissioners of claims, appointed under the Act " of Congress, of March 3, 1871, she testified on the tenth of " November, 1873, under oath, as follows:

" Mr. Linton had endorsed some notes, and those notes " were in possession of W. and D. Urquhart, of New Orleans. " They held, of course, a privilege on his crops and plantation, " and at the time of secession—I think the first winter, in 1861, " Gov. Moore issued an order that no cotton should be " brought into New Orleans that was in danger of becoming a " bait for the enemy, or some such nonsense, and hence, all " cotton remained on the plantations. Now, when General " Banks went up Red River there were 1,700 or 1,800 bales " of cotton on the place—500 or 600 baled and ready for ship- " ment and the rest partly baled and stacked in houses. * * *

" *Q.* Did Gov. Wells say to you that he had taken from " four to five hundred bales of your husband's cotton?

" *A.* Yes, sir; that he had moved it as keeper. * * *

" *Q.* What became of the balance of that cotton?

" *A.* It was burned by the Confederates. A personal " acquaintance and friend told me himself that he had put the " torch to it. I asked him the reason and he said: " Because " you had all been on the plantation a short time before, and " when we came back there and found that everything had " been left, we knew, of course, that what the Federals had " protected, we had a right to burn." * * *

" *Q.* Did he burn your dwelling?

" *A.* Yes, sir; they burned all the cabins and negro " houses, twenty-four or twenty-six in number, at Quantico, " and they burned the dwelling and the cotton houses; they " burned everything." * * *

" Respondent says that while it has no reason to believe " and does not believe that the losses alleged to have been

" sustained by the owner of Quantico plantation, at any time " between the 17th of June, 1863, and the 3rd of February, " 1866, while the military commission had charge and control " of the affairs of the Louisiana State Bank, are in anywise " attributable to the fault or neglect of said Commission; " further says that be that as it may, the State National Bank " and the stockholders thereof, against whom relief is sought " in this suit, are in nowise responsible for any loss, which " may be attributable to the acts, faults or neglects of said " Military Commission, for the reason that its predecessor, " the Louisiana State Bank, and its stockholders had no con- " trol whatever over said Military Commissioners, who were " not their agents, but were placed in charge of the affairs of " said bank by an overpowering military force, against the " solemn protest of the directors of said bank, on behalf of " the stockholders, whose agents and representatives they " were. And respondents say that to hold the bank and its " stockholders liable for the management of the affairs of the " bank under such circumstances would be contrary to " natural justice, and every principle of law and equity."

"And respondent says that the fact that said Military " Commission was in charge of the affairs of the bank from " the 17th of June, 1863, to the 3rd of February, 1866, in " itself constitutes a complete bar to the right of complainant " to recover against the State National Bank of New Orleans, " for any loss or damage alleged to have been caused by the " acts of said Commission during said period, and respondent " hopes it shall have the same benefit of this defense, as if it had " been specially pleaded, in bar of so much of said bills as it " is applicable."

" Further answering, respondent says that on the 28th of " October, 1865, after the occurrence alleged in the bills of " complaint, whereby it is therein alleged the owner of the " Quantico plantation had sustained a loss of over one million " four hundred thousand dollars, for which the State National " Bank is therein alleged to be liable, Stephen D. Linton " addressed to the Military Commission then in charge of the " affairs of the bank, a letter, in which nothing is said about " the bank being indebted to him on any account whatever, " but acknowledges the mortgage debt, evidenced by his " notes, described in the National Act of December 27th, " 1859, before Theodore Guyon, Notary Public, and second

"by mortgage on the Quantico plantation. And asked for "time and that he should be allowed to cultivate the place "unmolested, paying as much as he could every year, until "the debt should be paid, or until he should see that he could "not succeed in his undertaking, which proposition was not "accepted by the Commission."

"And respondents further say that after the assets of the "bank and its affairs had been surrendered to the management "of the stockholders, and long after the occurrences, whereby "it is averred in the bills of complaint herein the Louisiana "State Bank became indebted to Stephen D. Linton as owner "of Quantico plantation in a sum exceeding one million four "hundred thousand dollars, to wit: On September 7, 1866, "the complainant, Marie P. Evans, addressed to the stock-"holders of the Louisiana State Bank, a letter in which "no mention whatever is made of the said bank being indebted "to Stephen D. Linton, in any sum, or any account, but in "which the mortgage indebtedness of Linton to the bank in "a very large amount is acknowledged. That letter is as "follows:

"To the Stockholders of the Louisiana State Bank.

"Gentlemen:—In behalf of my husband, Mr. S. Duncan "Linton, who is ill, and whose curatrix I have been appointed "by the tribunal of France, I herein make a proposition "relative to the Quantico plantation, on which you hold eight "mortgage notes and taking into consideration the renewed "condition of the country, I trust you will be generous in "your conclusions, as I shall be conscientious in mine.

"If the bank agree to take fifty per cent. on the face of "these notes making the whole debt about $40,000. I will "assume the payment thus:

"First.—By organizing the labor which I control com-"pletely.

"Secondly.—By paying nothing the first year, inasmuch "as the buildings are destroyed and the wreck of the place is "such as to require all I could make the first year to put the "place in a responsible condition for this debt.

"Thirdly.—I agree to bind myself to pay annually the "sum of $5,000 until the debt is paid, with such interest as "the bank may deem just.

"Fourthly.—That the bank purchase the place and bind "herself to return it to my possession as soon as I pay the "debt.

"Fifthly.—That the bank seize the plantation immediately, "thereby securing the present growing crop and that she bind "herself to turn over to me the proceeds of said crop; other- "wise I have not the means to touch the place at all.

"Hoping this proposition may meet your approbation "gentlemen, I am most respectfully,

"(Signed,) MARY PERKINS LINTON.

"This proposition of Mrs. Linton, now Marie P. Evans, "complainant in this cause, was declined on the 20th October, "1866 ,by a vote of the Board of Directors of the Louisiana "State Bank.

"Prior to this, on the twenty-seventh of March, 1866, the "bank had purchased at sheriff's sale of the effects of "W. and D. Urquhart, the five of said mortgage notes which "the bank had previously held as pledges, as hereinbefore "stated, and on the twenty-first of September, 1866, suit *via* "*ordinar a* on the eight mortgage notes, then so acquired and "held by the bank, then amounting, in principal and interest "accrued, to over a hundred and twenty thousand dollars, "had been instituted in the then Fourth District Court of the "City of New Orleans. Service of citation was accepted for "Stephen D. Linton, by Mary Perkins Linton, as provisional "administrator of S. D. Linton, by appointment of the proper "Court in France by which he had been interdicted, and also "by P. H. Morgan, Esq., who had his power of attorney. "This was the first step taken in the Courts by the Louisiana "State Bank as the holder of said mortgage notes against "Stephen D. Linton and the Quantico plantation. There was "judgment by default in the suit on the twenty-second of "May, 1867, which was confirmed on the first of June, 1867.

"Under this judgment the Quantico plantation was seized "and sold on the second of January, 1869, for the sum of "sixteen thousand nine hundred dollars, the bank being the "purchaser at the said sale.

"Subsequently the bank sold the said plantation to "Charles L. Robinson and Wm. Hayman, but a suit was "instituted to annul the sale of the bank, and the Supreme "Court decided to annul the sale, and the bank was compelled "to refund to the said purchasers the amount they had paid.

"The plantation was then advestised for sale, under pro- "ceedings in the succession of said S. D. Linton, by J. Madison

" Wells, Jr., who as public administrator had been appointed by " the Court, and was acting as dative testamentary executor of " the estate of S. D. Linton, and sold by the sheriff on the 17th " of March, 1877, to Charles L. C. Dupuy, for the sum of fifty- " five hundred dollars, and on the 22d day of March, 1877, " Charles L. C. Dupuy sold the said plantation, with all the " buildings thereon and appurtenances thereunto belonging, to " Charles L. Robinson, for the sum of twelve thousand dollars, " by an act passed before Theodore Guyol, Notary Public, in " this city.

" That the complainant herein, the said Marie P. Linton " Evans, aided and assisted by her husband and co-complain- " ant, William R. Evans, intervened in the said act of sale last " aboved named, and therein it was declared by them as fol- " lows, viz.: " And now to these presents came and intervened, " Mrs. Marie Perkins, widow by first marriage of Stephen D. " Linton, and now the wife, by second marriage, of William " R. Evans, at present residing in the city, and by whom she " is herein duly and specially assisted and authorized, who " after having read and taken full cognizance of what is above " written, declared that in her capacities of widow in commu- " nity and universal legatee of the said late first husband, the " said S. D. Linton, she does hereby approve, and to all inter- " ests confirm and ratify, as well the sale and conveyances " herein made by the said Dupuy to the said Robinson, of the " property above described, as the sale and adjudication thereof " made by the Sheriff of the Parish of Rapides, to the said " Dupuy on the 17 day of the present month, in the matter of the " succession of the said Stephen D. Linton, hereby wishing and " intending that the two sales shall have their full force and " effect, and shall in all respects be as valid, as though she had " been a party to and had signed the same as vendor, and " moreover renouncing for herself and her heirs in favor of the " present owner of said property, any and all rights which she " may now have or ever had therein—whether as widow in " community and universal legatee—of the said Stephen D. " Linton, or otherwise."

" And respondent annexes hereto a copy duly certified " of said act of sale and ratification, so made by said com- " plainants before T. Guyol, Notary, on the 22d of March, " 1877. And makes the same a part of this answer, and marks " the same for greater certainty as " Exhibit A."

"And further answering respondents say, that Stephen "D. Linton named in the Complainant's original and supple- "mental bills died, as averred in the original bill, in the City "of Paris, France, on or about the 15th day of December, "1867, and his succession was duly opened in the proper "court in the Parish of Rapides, Louisiana on the 11th day of "March, 1868 and numbered 1171 on the docket of said "court, on which day a petition was filed in said Court by "Coleman D Calvit, setting forth the death as aforesaid of "the said Linton, and alleging that he died intestate and left "property and effects in said Parish of Rapides and also a "large number of creditors in the State, and that an admin- "istration was necessary, and praying that said Calvit should "be appointed Curator of said succession, and that an inven- "tory and appraisement of the effects of said succession "should be made according to law; that upon notice being "given of said application, an opposition thereto was filed by "Jules A. Blanc, president of the Louisiana State Bank, alleg- "ing that said bank was a large creditor of said succession "and that said Calvit was not a creditor thereof, and praying "that said Blanc should be appointed Curator of said succes- "sion in preference to said Calvit.

"And respondent furthur says that afterwards, to wit, "on the 8th of October, 1868, on the application of said Blanc, "the said court appointed John H. Ransdell provisional "Curator and Guardian of the property of said succession, "and ordered him to be put into possession of the same, and "that he was so put into possession.

"That subsequently, on the 17th of December, 1868, on "the petition of the Louisiana State Bank and others claim- "ing to be creditors of said succession, an inventory and "appraisement was made of the property of the succession by "order of Court and duly returned and filed in the mortuary "proceedings, from which it appears that the entire assets of "said succession were appraised at the value of seventeen "thousand one hundred dollars.

"And respondent further says that other proceedings "thereafter had, in the matter of the administration of said "succession not material to be stated here, and that on the 14th "of September, 1870, a petition was filed therein by Orestes "R Hawley public administrator of said Parish of Rapides, "setting forth that said succession was a vacant one, and

"that there was a contest then pending in said Court for the "Curatorship thereof, and praying that he, the said Hawley, "should be appointed administrator thereof as provided by "law and that he be put into possession of the property and "effects of said succession, and for an inventory to be taken, "and that thereupon he was so appointed and put into pos- "session, and an inventory was taken on the 20th of Septem- "ber, 1870, and duly returned and filed in the mortuary pro- "ceedings, and that from said inventory it appears that the "entire assets of the said succession were appraised at the "value of Twenty-seven Thousand, Six Hundred Dollars.

"And this respondent further says that subsequently, to "wit, on the 3d of May, 1871, the said administrator filed a "tableau of debts, acknowledged to be due by said succession, "amounting in principal to the sum of $121,046.66⅔, with a "large amount of accrued interest thereon, of which amount "the sum of $86,666.66⅔, with large arrearages of interest, "is set forth as due by said succession to the Louisiana State "Bank.

"And this respondent avers the truth to be, as appears "from said inventories and appraisements and said tableau of "debts, that said succession was heavily insolvent, if not "twenty times insolvent," as it has since been pronounced to "have been by the Supreme Court of Louisiana, and that "therefore there was and could be nothing coming from it to "any heir of Stephen D. Linton, testamentary or at law.

"And this respondent further says, that from the time of "the filing of the said tableau of debts, as aforesaid, on the "3d of May, 1871, various proceedings were had in said "Court in due course of administration, not necessary to be "specifically stated here till the 9th of January, 1872, when a "petition was filed in behalf of Mary P. Linton and Charlotte "P. Linton, claiming as sisters of said deceased S. D. Linton, "to be his heirs-at-law and praying to be recognized as such "and to be allowed to accept said succession with benefit of "inventory, and also praying that the appointment of said "public administrator to administer upon said succession "should be vacated and that their attorney, S. C. Manning, "should be appointed to take charge of said succession in "their names, which application was refused.

"And this respondent further says that pending the pro- "ceedings, as aforesaid, upon the said petition of the said

" sisters of said Linton, J. Madison Wells, Jr., was appointed " public administrator for the Parish of Rapides, *vice* O. K. " Hawley, and became party to the proceedings in his stead " on the 7th of July, 1873; and succeeded the said Hawley " in the possession and administration of the property and " assets of said succession.

" And this respondent further says, that while the said " Wells was, as aforesaid, in actual possession and administra- " tion of said succession, to wit, on the 25th of May, 1875, a " certain paper dated at Matamoras in the year 1863, was " upon the petition of Henry Perkins, probated as the last will " and testament of Stephen D. Linton, before H. L. Daigre, " Parish Judge of the Parish of Rapides, wherein his wife, " Mary Linton, is constituted the sole and exclusive inheritor " of all property he may leave at the time of his death.

" And respondent further says that on the petition of the " said Mary P. Linton and of her husband by second marriage, " William R. Evans, *ex parte*, and without notice or citation to " said public administrator, then in the actual possession and " administration of said succession, judgment was rendered by " said N. L. Daigre, Parish Judge, ordering the said Marie P. " Evans, as universal legatee, to be put into possession of said " succession, which judgment was rendered on the 13th of " July, 1873, and which was afterwards declared null and void, " and the said Marie P. Evans enjoined from taking posses- " sion thereunder, by judgment of Court rendered on the 24th " day of October, 1876, on the petition of the said I. Madison " Wells, Jr., public administrator.

" And respondent further says, that on the petition of J. " Madison Wells, Jr., as public administrator, he was, by order " of Court, the 13th of March, 1876, appointed dative " testamentary executor, under the will, which had been " probated as such.

" And respondent further says that it was while he was " in the actual and lawful administration of said succession " aforesaid, that in due course of administration, the said " 'Quantico' plantation was sold to Charles L. C. Depuy' as " above set forth, which sale was subsequently ratified and " confirmed by the said complainant, Mrs. Marie P. Evans, " by act before T. Guyol, Notary Public, on the 22d of March, " 1877, as hereinbefore stated.

"And this respondent further answering, specifically "denies the truth of all and singular the averments of the "second supplemental bill, which are in the nature of a special "replication to the plea filed by this respondent to the orig- "inal and first supplemental bill, and set up matters of avoid- "ance thereof, and specially denies that the proceedings in the "Parish Court of the Parish of Rapides, whereby the said "Court, on the 25th of October, 1 76, formally adjudged that "the judgment of said Court, of the 13th day of July, 1876, "recognizing the said Marie P. Evans, as universal legatee of "the said Stephen D. Linton, and ordering her to be put into "possession of his succession, was declared null and void, "were, as averred in said second supplemental bill, sham pro- "ceedings, or collusive, or fraudulent, or corrupt, or in any- "way invalid; but, on the contrary, respondent avers the "truth to be, that the said proceedings, and all the other "mortuary proceedings in the succession of Stephen D. Linton, "averred and relied upon by this respondent in this answer, or "in the pleadings heretofore filed were valid, lawful and *bona fide* "proceedings, brought and carried on for the lawful and legit- "imate purposes for which they purport on their face to have "been brought and carried on; that they were proceedings of "a Court of competent and exclusive jurisdiction, to deal with "and determine the matters therein and thereby determined, "and that the proceedings and judgments of said Court speci- "fically set forth and pleaded in the pleas heretofore pleaded "by this respondent and now adopted as part of this answer, "as obligatory and binding upon all Courts and all parties "until lawfully reversed or set aside.

"And this respondent further answering denies all and "singular all charges of conspiracy or combination with the "said David Urquhart, the said I. Madison Wells, the said "J. Madison Wells, Jr., or others in said bills made, and "denies specifically all charges of fraud, fraudulent concealment, "or contrivance in respect of any and all of the matters "averred in the said bills, and denies all and singular, the "facts averred in said bills, in so far as any element or "circumstance of fraud or combination or concealment is "averred to attend, accompany or constitute such alleged "facts, and this respondent avers that all the acts and doings "of the Louisiana State Bank and of the State National Bank "of New Orleans, in and about the premises, have been legiti-

"mate, lawful and *bona fide*, and for the assertion of its legal "and equitable rights, as set forth in the pleadings herein.

"And further answering, respondent claims the benefit of "the prescription of one year, three years, five years and ten "years, as established in the civil code of the State of "Louisiana, as fully as they are applicable to any facts "apparent in the case.

Answers by the Bank to Interrogatories propounded to both Defendants.

"And now, proceeding to answer the interrogatories "propounded, through its President, Samuel H. Kennedy, "answers and says:

"To the interrogatories propounded in the original bill, "to both defendants:

"To first interrogatory. I have no personal knowledge "of any occupation, or attempt of occupation, of Quantico "plantation by the Louisiana State Bank nor the State "National Bank, nor can I find, after diligent search among "the books and papers of those banks, any evidence or refer- "ence to any occupation or intended occupation of said "plantation.

"To second interrogatory. I refer to my answer to in- "terrogatory first and make that a part of my answer to this "interrogatory. I have no personal knowledge, nor can I "find, after diligent search among the books and papers of the "Louisiana State Bank, or the State National Bank, any evi- "dence or reference showing that any property or proceeds of "property of any kind, or at any time, was ever obtained, or "came into possession of either of said banks, that came or was "derived in any way from the said Quantico place or planta- "tion, except in the following manner, to wit, that the said "Quantico plantation itself was sold by the Sheriff of the "Parish of Rapides on the 17th of March, 1877, under judicial "orders and proceedings taken in the matter of the succession "of S. D. Linton by J. Madison Wells, Jr., who, as public "administrator of said parish, had been appointed to act as "dative testamentary executor of said estate; that said sale "was made to pay the debts of said estate; the said Louisiana

" State Bank being the largest recognized creditor as holder " of the said eight mortgage notes made as aforesaid by S. D. " Linton; that at said Sheriff's sale the said Quantico planta- " tion with its improvements and appurtenances was adjudi- " cated to Chas. L. C. Dupuy for the sum of five thousand five " hundred dollars, and that the State National Bank as creditor " as aforesaid, participated in the distribution of the price so " realized, subject to the payment of Court charges, etc. " That subsequently, to wit, on the 22d of March, 1877, by " act, before Theo. Guyal, Notary Public in this city, said " Dupuy resold said property to Chas. L. Robinson; and the " said complainant, Mrs. Marie P. Evans, aided and assisted " by her husband and co-complainant, William R. Evans, inter- " vened in said act, and expressly and formally ratified both " the sale of said property to Robinson and also the sale by " the Sheriff to Dupuy, made as hereinbefore stated on the " 17th of March, 1877, and renounced any and all rights she " then had or ever had in said property, either as widow in " community or as universal legatee of said Linton or other- " wise, as will appear with other covenants, from the certified " copy of the said act annexed as " Exhibit A."

" To third interrogatory. I have no knowledge of any " agreement, such as is referred to in the third interrogatory, " nor can I find any evidence of any such agreement among " the archives of the Louisiana State Bank, or of its successor " the State National Bank, or of any occupation or intended " occupation, of the Quantico plantation by either of the " defendants to this suit.

Answers to Interrogatories to the State National Bank, in the Original Bill.

" To first interrogatory. The Louisiana State Bank was " organized under an act of the Legislature, approved on the " 14th of March, 1818. Its officers for several years prior to " the 17th of June, 1863, were J. M. Lapeyre, President, " L. Bernard, cashier, both since dead. The Board of Direc- " tors, were at that time, June, 1863, J. M. Lapeyre, Jules A. " Blanc, Alexander Brother, R. Bruger, A. Carriere, P. Gelpi, " S. H. Kennedy, C. Oliver and John R. Shaw.

"On the seventeenth day of June, 1863, after formal "protest by its President and Board of Directors, the Louisiana "State Bank, under the irresistible compulsion of a military "order, was surrendered under an inventory to a military "commission, said order being issued by Major-General "Banks, dated before Port Hudson, June 11, 1863.

"The said commission was composed of Colonel Charles "C. Dwight, of the 160th New York Volunteers, A. "Milltinberger and J. M. Lapeyre, subsequently, Christian "Roselius was substituted for Colonel Dwight. This com- "mission took possession of the bank and of its assets, and "continued to manage its affairs from that date, until the third "day of February, 1866, when they adjourned *sine die*, and "restored possession of the bank to its directors.

"On the 21st of August, 1863, as named in the interrog- "atory to which this is an answer, there were no officers of "the bank, it being in the hands and under the control of "the military commission, as hereinbefore stated.

"The Louisiana State Bank was changed into a National "Bank, under the name and title of the "State National Bank "of New Orleans," by a vote of its stockholders duly authen- "ticated by the National Banking Law of the United States, "under an Act of Congress approved June 3d, 1864, and "under sections 51 and 54 of the revised statutes of the United "States, which action of the stockholders was approved by "the comptroller of the currency, as per certificate of organi- "zation, No. 1774, dated 20th February, 1871.

"To second interrogatory. The State National Bank "took possession of all books and documents, records and "property, and money of every kind, nature and character, "belonging to the Louisiana State Bank. There is no record, "entries nor statements made in any of the said books, of the "receipts of property or proceeds of property sold, was "received by the said Louisiana State Bank, or any of its "officers, which came from the said Quantico place or plan- "tation, at any time or in any manner, except only from the "sale of the said Quantico plantation itself in 1877, as is fully "described in affiant's answer already made above to the "second interrogatory propounded to both defendants, and to "which reference is now made as part of the answer to inter- "rogatory."

"Answer to the Interrogatories in the first Supplemental Bill.

"To first interrogatary. The State National Bank has "not had any arrangement or understanding of any kind, "nature, or character, with J. Madison Wells, Jr., nor made "any arrangement, nor had any understanding with him "touching Quantico plantation, that I am aware of, or of "which there is any record in the bank, so far as I know.

"Second interrogatory. The answer to interrogatory "first, is made a part of my reply to this second interrogatory "as to any agreement or understanding, with J. Madison "Wells, Jr. He is unknown to me. I have no knowledge of "my own, nor can I find any record or evidence, among the "books and papers of the Louisiana State Bank, or of the "State National Bank, showing or referring to any connection "or arrangement or understanding, between either of those "banks; and J. Madison Wells, or J. Madison Wells, Jr., "touching Quantico plantation or as informed of in this "interrogatory.

"To third interrogatory. The answers already made to "interrogatory second, to both defendants and the answers to "the first and second interrogatories, under the first supple- "mental bill are referred to as part of my answer to this "interrogatory. I find among the records of the bank the "following taken from the proceedings of the board of "directors of the bank, which I have had copied from said "records, and make part of my reply to this interrogatory, "and are for greater certainty marked as exhibits 'B,' 'C,' "'D,' and are filed herewith as part hereof.

"The Quantico plantation was first sold on the 2d of "January, 1869, under judgment and judicial proceeding "instituted in 1866, by the Louisiana State Bank; then re-sold "by the sheriff, March 17, 1877, as fully explained in my "answer to the second interrogatory provided under the "original bill to both defendants, and the sale thereof by the "sheriff, was duly ratified by the complainant, Mrs. Marie P. "Evans, as therein explained, and reference is now made to "the said answer, as a part of the answer to this interrogatory.

"I know of no agreement between the defendants in this "cause, or any other cause, and the said J. Madison Wells, Jr., "touching the sale of said plantation, nor can I find any record "or evidence of any such agreement of any kind or nature "whatever, or of any such understanding between said defend- "ants and said J. Madison Wells, Jr.

"To interrogatory fourth. I know nothing whatever of "any knowledge, or want of knowledge, that J. Madison "Wells, Jr. may have had touching the matter referred to in "the fourth interrogatory, to which this is a reply, or of his "having in any manner taken possession of the plantation "surreptitiously and unknown to the complainants. Affiant "refers to his answer to the interrogatory number three, last "preceding this, as part of his answer to this interrogatory.

"And this respondent denies all, and all manner of un- "lawful combination and confederacy wherewith it is by the "said bills charged; without this, that there is any other "matter, cause, or thing, in the said complainants' bill of com- "plaint contained, material or necessary, for this respondent to "make answer unto, and not know and hereby well and "sufficiently answered, confessed, traversed, and avoided, or "denied, is true to the knowledge or belief of this respondent; "all which matters and things this respondent is ready and "willing to aver, maintain, and prove, as this honorable Court "shall direct, and prays to be hence dismissed with his reason- "able costs and charges, in this behalf most wrongfully "sustained.

"J. McCONNELL,
"*Of Counsel.*

"Samuel H. Kennedy, being first duly sworn, deposes "and says, that he is President of the State National Bank of "New Orleans; that the facts stated in the foregoing answer, "as also in the answers to the interrogatories therein con- "tained, so far as the same are therein stated, and set forth as "from his own knowledge, are each and all severally true, and "that so far as the same are stated from knowledge derived "from others, he believes the same to be true.

"(Signed) SAMUEL H. KENNEDY.

"Sworn to and subscribed at New Orleans this fifth day "of November, 1881, before me.

"[SEAL.]

"(Signed) "M. M. COHEN,
"*U. S. Com. Fifth Circuit and District of Louisiana.*

Upon the issues thus made by the pleadings, testimony was taken and **MOTIONS TO SUPPRESS TESTIMONY** made by both parties. (*R.* 124 and 114.)

After full argument, in which the complainant was represented by two able counsel, Mr. Leonard and Judge Brice, both of whom argued the case orally and filed separate briefs, his Honor, the Judge of the Circuit Court, dismissed the complainant's suit.

After stating the complainant's version of the facts, the Court found the facts and announced its conclusions as follows:

Opinion of the Court.

"From the evidence in the case I find:

"I. The seizure of the Quantico plantation in the suit of "*Urquhart vs. Linton, No. 14,665*, of the docket of the Fourth "District Court of New Orleans, was an actual seizure, and "thereunder J. M. Wells was appointed keeper, and as such "keeper had possession.

"This appears by the averments of complainant's bill, by "the record of the case, No. 14,665, by the judicial allegations "and admissions of Linton, in his suit No. 14,846 of the "same Court, for an injunction, by the testimony of Wells, "who swears he was appointed keeper, under the process "which issued from the Fourth District Court of New "Orleans, and by the testimony of the complainant herself, "who swears that in the early spring of 1863, she was herself "on the plantation, and that the property was then in the "possession of Gov. Wells, who was living on the place, in "possession and charge.

"II. It is not satisfactorily shown that any suit was entered by the Louisiana State Bank against Linton in 1863, nor "that any seizure of Linton's property was made in that "year on behalf of the bank; neither the original bill in this

"case nor any of the supplemental or amended bills allege "any such suit and seizure, the only allegation on the subject "being 'that during the time of such occupation by said "David Urquhart, and on or about the twenty-first day of "August, A. D. 1863, the defendant, the State National Bank "of the city of New Orleans, then known as the Louisiana "State Bank, joined with the said defendant, David Urquhart, "in the possession and occupancy of the said above mentioned "and described piece or parcel of land, and continued in such "possession and occupancy until on or about the — day of "January, A. D. 1869.'

"Such suit and seizure were very unlikely proceedings "to be had at that time. The State Bank was in the hands of "loyal liquidators, appointed by the general commanding the "United States forces in Louisiana. The Parish of Rapides "was at best debatable ground, with none but a Confederate "Court and officers, and whether such a suit was instituted in "Rapides, or Orleans Parish, it is not likely that a seizure could "have been made in Rapides except, perhaps, in the latter "case, during the short time the Federal troops occupied the "parish in 1863, and any such seizure would have been vain "and illusory.

"The main witness on this point, Clements, who testifies "that he was the deputy Sheriff that made the seizure, says "the suit was instituted in Rapides, and was during the "Federal raid of 1863, which, he says, lasted about ten days, "and that he then and there appointed Wells keeper.

"The witnesses, Mrs. Morris and Jackson Johnson, whose "testimony was taken twenty-one years after, are certain that "Clements made the seizure at the suit of the bank, on pro- "cess from Rapides Parish in August, 1863, and then and there "appointed Wells keeper. Henry Perkins, uncle of com- "plainant and to some extent agent for Linton, swears that he "was on the place in September or October, 1863; that Wells "was in charge as keeper; that he saw his authority, and it "was signed by Neal, the Sheriff.

"Wells swears that he was appointed under process from "the Fourth District Court of New Orleans, and in this he is "corroborated by the appointment, a copy of which is in "record 1,4665, from said Fourth District Court. It is argued "strenuously, that as both complainant and defendant agree "that in 1864 the Court-house and records of Rapides Parish

" were destroyed, that the papers presented in 1865, in the " Fourth District Court, purporting to be the original order " of seizure and sale in No. 14,665, and the appointment there- " under of Wells as keeper, were manufactured for the occa- " sion. The high character of the attorneys appearing at that " time in that case—one of whom (Senator Jonas) swears that " he saw the original—forbids the Court from such conclu- " sion; and what more natural than that Governor Wells as " keeper, should have in his possession his appointment as " keeper. Henry Perkins, whom the complainant ought not " to dispute, swears that Wells showed it to him in September " or October, 1863.

" It seems to me, from all the circumstances in proof, that " Deputy Sheriff Clements, from lapse of time and confusion " of seizures, is mistaken, and that the witnesses, Mrs. Morris " and Jackson Johnson, are not entitled under the circum- " stances to much credit, when they swear so positively as to " the bank being creditor in a suit between other parties " twenty-one years before. The history of this case, as shown " by the pleadings, strongly tends to show that their testimony " was an after-thought, or lucky find for the complainant, if " not to themselves.

" III. The evidence does not show that the bank had any " hand in the removal and conversion of cotton, from the " Quantico plantation, at any time, during or after the war. " Nor that any agents of the bank had anything to do with " such removal and conversion.

" There is a great deal of hearsay evidence to the effect " that Wells and the parties who assisted in bringing cotton " out of Red River in 1864, and in selling and disposing of it, " said at times that " the bank had an interest," " that the bank " had a lien," that " Wells said in removing cotton from " Quantico he acted as agent of the bank," that " Weed & Co. " said it was cotton which had been seized by some bank," " but there is no evidence to bring home to any agent of the " bank, anything to do with the removal and conversion of " any cotton except that of V. A. Ward, secret service officer, " who says that he reported to Col. C. W. Kilbourne, provost " marshal, that cotton was brought to New Orleans on gov- " ernment transports attached to the bank expedition, and " that J. Madison Wells had some connection with it; that " thereupon Col. Kilbourne sent him (Ward) for J. M. Lapeyre,

"who came to the provost marshal's office, and thereupon the "provost marshal asked him about this cotton that came "down the river, supposing it to be John A. Stevenson's, who "had a contract to bring in cotton, which the Goverment had "an interest in to a certain extent, and he said: "No; it was "cotton that he had got a permit to bring in; it was Madison "Wells' cotton, which the bank had a lien upon."

"Col. Kilbourne, the provost marshal, testifies that he "sent for Lapeyre, at the instance of Gen. Bowen, and that the "interview with Lapeyre was in the presence of Gen. Banks, "Gen. Bowen and himself, and that Lapeyre explained that it "was not Stevenson's cotton, but cotton purchased with "money belonging to some other fund, and he says nothing of "any claim on the part of the bank.

"Now Lapeyre had been president of the Louisiana "State Bank, and was at that time one of the three military "liquidators and a commissioner of the bank.

"That he was engaged in cotton speculations, and was "interested with Wells and others in the cotton brought from "Red River, may be conceded, and still the case is far from "showing that in such interest with Wells, he (Lapeyre) "represented the bank, or pretended to do so. Nothing "would be more natural, if Wells and other men, engaged in "spoliating the owners of cotton, and bringing it in through "the Union lines, than for them to answer that the bank had "" an interest," or "a lien," well knowing that the bank was "in the hands of a loyal commission, under the protection of "the general commanding, and that the bank held large "mortgage interests on plantations, and on "Quantico" in "particular.

"IV. The case shows that on June 11, 1863, the Com- "manding General of the Department of the Gulf, by special "order No. 138, appointed Col. C. C. Dwight, A. Miltenberger "and J. M. Lapeyre, commissioners to effect the liquidation of "the Louisiana State Bank, and advised that said commissioners "enter upon the discharge of their duties immediately, and "that accordingly, on the 17th of June, over the protest of "the president and board of directors of said bank, the said "commissioners took possession of all the assets, affairs and "business of said bank, ousting the directors from all control, "and that the affairs and control of the bank remained in the "hands of said commissioners, and out of the control of its

"legal board of directors, until General Canby restored the "bank and its affairs, to the directors and stockholders in "January, 1866.

"This period, from June 17th, 1863, to 1866, covers the "time of all operations complained of in the present case.

"V. There is no evidence to show that any of the pro- "ceeds of the alleged spoliation and conversion of the Quan- "tico cotton, ever came to the hands of the bank, or to the "hands of any of the agents for the bank, while the sworn "answer of the bank, and the evidence of Samuel H. Kennedy, "a director from 1863 till now, and for many years president "of the bank, and that of C. L. C. Dupuy, cashier, is positive "that the bank received no part or parcel of such proceeds, "and they are corroborated by the books and records of the "bank covering its entire history.

"The evidence in this case is very voluminous, and relates "to many matters, I find no time nor necessity to review, for "they throw no light upon the issues as I understand them.

"It seems to me very clear, that in order to hold the "bank liable for the alleged conversion and spoliation, it is "necessary to find, that, either the bank through its agents, "participated in the conversion, or received or benefited by, the "proceeds of the conversion, in whole or in part. Under the "evidence in this case and the facts as I have found them, "neither of these is shown, nor is there under the evidence, "a well founded suspicion that the bank was guilty of either.

"Whatever figure the agents of the bank cut in the whole "matter (and we have proof only of the single declaration of "Lapeyre, military commissioner, as testified to by Ward), "would not, in my judgment, bind the bank even if it had "been in the control of its own agents; but when it is con- "sidered, that at that time the bank, was in the possession and "under the control of the military authorities, and not under "the control of its directors and stockholders, it would seem "preposterous to hold the bank responsible for torts and "wrongs, with which the stockholders had nothing to do, "and, that too, on flimsy heresay evidence, only supported by "Ward, who is directly contradicted by Kilbourne.

"That the wrongs were committed by the military liquida- "tion, and that the bank ratified by its stockholders resuming "control, is an assumption without proof, and a conclusion "that does not follow.

"A decree will be entered dismissing the bill, and "amended and supplemental bills, as to the State National "Bank, with costs."

In discussing the issues involved in this case, we will first consider the positions affirmed, and insisted on, by complainant's counsel. They are two in number.

Points made by Complainant.

I.

IT IS ARGUED BY COMPLAINANT'S COUNSEL THAT two suits were instituted **AGAINST LINTON** in the **PARISH OF RAPIDES, IN AUGUST, 1863, ONE BY URQUHART, AND THE OTHER BY THE DEFENDANT BANK, IN WHICH SUITS TWO WRITS WERE ISSUED, AND SERVED, AND UNDER WHICH, SOME 1800 BALES OF COTTON WERE SEIZED. AND J. MADISON WELLS, APPOINTED KEEPER THEREOF.**

We say this is **argued,** because neither the original bill, nor either of the two supplemental bills, contain any charge that the bank either brought a suit or made a seizure in August, 1863. The language of the original bill is, that "**David Urquhart,** under some unauthorized judicial process, **seized,** etc.," and that the Bank in 1863, "joined with" him in the possession. There is no allegation of any suit or seizure by the bank, in any bill of complaint in this case. The above charge of a suit or seizure in 1863, therefore, is **AN AFTER-THOUGHT.**

Let us now examine the testimony adduced by complainant in support of this charge, which is made only *arguendo.*

TWENTY YEARS after these events are said to have transpired, three witnesses, Mrs. Morris, John Clements, and Jackson Johnson, and only these three, are produced, who

testify as to the contents of Court papers of which two of them, Mrs. Morris and Johnson, must have had only a casual glance.

Clements the principal witness was first examined in 1881, and when asked "who the plaintiffs were," answered, "one was Mr. Urquhart, and the other I **think**, was the Louisiana State Bank, **if I am not mistaken. I am not positive,** but **the** bank was one, and the other was David Urquhart." (*R.* 169.) On p. 171, he says: "I gave the notice of seizure to a man called **Morrice Johnson.** On p. 174, *Q.* "You say you cannot remember what bank it was that made the seizure you speak of?" *A.* "No, sir; I cannot exactly say what bank." * * *

Q. Do you remember what Court these suits were in? *A.* **I do not;** I believe they came from the Court at Rapides, but **I am not positive."**

Again on p. 177. *Q.* "If you do not know what suit it was against Linton, you cannot give us the title? *A.* "Not entirely. * * * "Was it the Bank of Louisiana?" *A.* "**I don't know whether it was or not!**" *Q.* "What is your best recollection about this bank. Was it the bank of New Orleans? *A.* "**IT WAS THE BANK OF NEW ORLEANS.**"

Three years later, when the memory of this witness was naturally less distinct, by this further lapse of time, and increased age, he "corrects" his former testimony, and then, has "**no doubt**" as to what bank it was.

He also "corrects" his former testimony as to the name of the man upon whom he served the notice of seizure. Before was it "**Morrice Johnson**" (*R.* 171), while, as subsequently "corrected," it is "a man named "**Morris**" (*R.* 228).

Mrs. Morris remembered the date of the seizure as being in August, 1863, and gives the following explanation why she remembered these details and this date, after the lapse of twenty-one years. She says: "**My** means of knowledge as to the time was, that my husband was cutting hay at the time." (*R.* 244.)

Jackson Johnson swears, "one was the writ of Louisiana State Bank *versus* Stephen Duncan Linton; the other was a writ from some merchant in New Orleans. These writs were from the Court of the Parish of Rapides."

He does not say he ever saw the writs, and the peculiar language used by this witness in describing the writs, is suggestive of doubt whether he knew what a "writ" was.

This branch of the complainant's case has no testimony for its support, as above stated, other than what is thus said by these witnesses after the lapse of twenty years.

In view of the defense, that the defendant bank was in the hands of military liquidators from June 17, 1863 to February 3, 1866, it is perhaps hardly necessary to consider in detail the evidence which contradicts the statements of these three witnesses, and shows not only that they were greatly mistaken, but also, as the learned Judge of the Circuit Court expresses it, that "their testimony was an afterthought, or lucky find for the complainant, **IF NOT FOR THEMSELVES.**"

But the groundless nature of this claim must be clearly shown, and we will now briefly collate the proofs, showing that the defendant bank brought no such suit against Linton as is charged, and never instituted any suit against Linton until September 26, 1866, as explained in defendant's answer.

First—The eight mortgage notes, held by the defendant bank, were admittedly, the only evidence of debt, the bank had against Linton. An inspection of the endorsements on these eight notes proves conclusively, that **THEY WERE NEVER SUED ON BUT ONCE, AND THAT WAS SEPTEMBER 26, 1866, IN SUIT 17,703, IN THE FOURTH DISTRICT COURT OF NEW ORLEANS.**

Fortunately these notes have not been mislaid. They will be sent up to this honorable Court in original for inspection. Their inspection proves that they were never filed in any Court in Rapides Parish, or any Court whatever, until September 26, 1866.

(See copy of these eight mortgage notes in the supplemental transcript.)

It is fortunate that these notes exist to refute the testimony of John Clements, Mrs. Morris, and Jackson Johnson.

The then counsel of the bank, ex-Senator Jonas, referring to these eight mortgage notes and the suit he instituted on them, September 26, 1866, testifies as follows:

"THEY HAD NEVER BEEN IN SUIT BEFORE." (*R.* 276.)

As therefore the defendant bank had no other notes of Linton, and held no other claims of any nature against him, and suit was never brought in the Parish of Rapides on these notes (as their inspection demonstrates), nor in any Court whatever until 1866, it follows conclusively that the defendant bank never brought suit in 1863, as charged, in Rapides Parish, or elsewhere, and, hence, never made the seizure as charged and complained of.

Second.—The testimony of J. Madison Wells is, that his connection with the property as custodian, was under a writ of seizure and sale issued from the Fourth District Court of New Orleans, (*R.* 618) and therefore the seizure was not made under a writ from a Court in the Parish of Rapides.

Third.—The pleadings in this case, sworn to by the complainant, aver that David Urquhart made the seizure under some unauthorized judicial process, March 15, 1861, and so held and continued until October 20, 1886. No charge of suit or seizure by the defendant bank, we repeat, is made in the pleadings.

Fourth.—The record of the suit of *David Urquhart* vs. *S. D. Linton, No. 14,665*, of the Fourth District Court of New Orleans, furnishes in itself, full and satisfactory proof that the seizure was made March 15, 1861, and that it was the seizure then made, which held and continued until October 20, 1866, when it was dismissed, as alleged in the original bill. (*R.* 399–408.)

An examination of this record, No. 14,665, in connection with the testimony of Mr. David Urquhart, shows some facts which prove that this seizure of Mr. Urquhart not only continued during the war, but was the only seizure that J. Madison Wells had anything to do with as custodian. The facts alluded to, and which are shown by that record, are these: Urquhart testifies that in October, 1865, Wells sent him an anonymous note, to say that sixty-five bales of cotton had been taken off Quantico, by the U. S. Bureau, and brought to the city. (*R.* 296.) Thereupon Urquhart employed ex-Senator Jonas as his counsel, and obtained an order in this suit, No. 14,665, under which the sixty-five bales were seized and taken into possession by the sheriff of the Parish of Orleans. A litigation thereupon ensued, between Urquhart and Wm. Prehn & Co., who intervened and claimed the cotton as purchasers. In this contest, two papers or documents were then produced and filed in Court (see *R.* 401 and 404) **both of which are sworn to as correct by J. MADISON WELLS** and by David Urquhart. Contained in these papers was the following important statement **thus verified by Wells himself:**

"The cotton (the sixty-five bales) was gathered during "the possession of the sheriff, and as such, under the law of "Louisiana, formed a part of the effects seized, and is held "under the seizure and forms as much a part of the security "of the same creditor as the land itself. **These facts, and "the actual possession of the cotton, are patent by the "writ of seizure itself, now submitted, and the authoriza-"tion of the sheriff, Wm. J. Neal, to Major (now Gov-"ernor) Wells, to take charge for him of all the cotton, "corn, and personal effects, on the Linton plantation, and "he has authority, further, to keep all intruders off the "land."**

W. J. NEAL, **Sheriff.**

August 31, 1863.

This matter is fully explained by Mr. David Urquhart in his testimony. (*R.*, 295, 296, *et seq.*) And also in the testimony of Ex-Senator Jonas. (*R.*, *pp.* 272 to 276, inclusive.)

Fifth.—From the reading of the latter portion of this record No. 14,665, in connection with the testimony of Mr. Urquhart and Mr. Jonas, it will be seen that the seizure of the sixty-five bales of cotton, was maintained by the averments, that the seizure made in 1861 in this suit, by David Urquhart, still held good; and that in Urquhart's motion and order for the seizure (*R.*, 401–404), **which are sworn to by J. Madison Wells,** it is declared that the seizure was made under the writ issued therein March 18, 1861, that the seizure remained, and "that this cotton was grown and produced while the plantation was under seizure by the Sheriff of Rapides, **at the suit of David Urquhart, and Governor Wells was the custodian of the property which is now and has been since March, 1861, under seizure,**" and that "these facts and the actual possession of the cotton are patent **BY THE WRIT OF SEIZURE ITSELF NOW SUBMITTED.**" It

further appears that the original writ of seizure, and seizure, and return of the Sheriff of Rapides, and the Sheriff's order therein to Governor Wells, to take charge of and keep the cotton, were produced and filed in Court. (*R.*, 401, 402.)

Testimony of Jonas, 274 to 277.

Testimony of Urquhart, 296 to 299.

Sixth.—A glance at the record No. 14,665 of *David Urquhart* vs. *Linton* more particularly the portion from p. 401 to 408, showing the proceedings in this case on the 31st of October, 1865, taken in connection with the testimony of Urquhart, the plaintiff, and Jonas, the counsel in the case, and the conduct and affidavits of I. Madison Wells, the custodian, who appeared in Court at that time, as shown by the record when read together, show conclusively that the seizure was made in that case and that it was the only seizure made.

It is also shown thereby, that David Urquhart controlled the seizure, in the interest of the three parties who owned the three mortgage notes originally sued on, to wit, Mrs. De Boyne, The Bank of Louisiana, and E. Burch. It is also further shown that this seizure of the sixty-five bales was compromised by David Urquhart, and that Urquhart then divided the proceeds with Henry Perkins acting in his capacity as agent of the complainant herein, by giving him half, and that Urquhart divided the remaining half, equally between the said three owners of the said three mortgage notes, to

wit, Mrs. De Boyne, **THE BANK OF LOUISIANA** and E. Burch.

(See testimony of D. Urquhart, 296, 297, 321, 322.)

(See testimony of B. F. Jonas, 272, 282 to 287.)

It is thus we submit, conclusively shown, that the defendant bank did not make the seizure charged or any other, and that the bank had no interest in, nor control over, the seizure made by Urquhart, and received no benefit whatever therefrom.

II.

The next contention of the complainant is, that **THE DEFENDANT BANK RECEIVED COTTON, OR REALIZED THE PROCEEDS OF COTTON, BROUGHT FROM THE QUANTICO PLANTATION, BY J. MADISON WELLS.**

On this point, the complainant has produced no direct proof whatever. Nothing beyond a few hearsay expressions, which Ward and Kilbourne as witnesses attributed to Mr. Lapeyre, and aside from these, and a few like expressions, alleged to have been made made by Mr. Lapeyre, at some time during the period he was one of the military liquidators of the bank, there is absolutely nothing, from which an inference can be drawn, to give color to the charge.

In this connection, we refer to the brief but unanswerable review of the testimony adduced by complainant on this point, contained in the opinion of the learned Judge of the Circuit Court (*R.* 636).

He there demonstrates what is the fact, that "the evidence does not show, that the bank had any hand, in the removal or conversion of cotton from the Quantico plantation, at any time during or after the war."

IN CONTRADICTION AND REFUTATION OF THE UNFOUNDED CHARGE THAT THE BANK RECEIVED COTTON, OR THE PROCEEDS OF COTTON, IN ANY MANNER, OR AT ANY TIME FROM QUANTICO PLANTATION, WE REFER THE COURT:

First. To the answer of the Bank (*R.* 80, 81.) and answer to the second interrogatory (95).

Second. We point to the proof in this record, that the books were, from the date of the institution of this suit, announced as open for complainant's inspection. It is in evidence that, each successive counsel of the complainant, (and there were many of them as the record shows) was specially invited to call at the Bank, and at their leisure examine its books, with the view of satisfying themselves, whether there

was anything shown by the books belonging to Mrs. Evans as coming from Quantico plantation or otherwise.

See testimony of J. McConnell, Esq., *R.*, *p.* 610.

Mr. Leonard was the only one of the numerous counsel of record of complainant, who availed himself of this invitation. He came accompanied by an expert accountant, Mr. R. H. Hall, and they both repeatedly, and at their leisure, examined all the books and documents pertaining to this subject.

Third.—The testimony of the cashier of the bank, Mr. Dupuy, shows (*R.*, 328, 329), that these gentlemen (Leonard and Hall), paid three or four visits to the bank, made a thorough examination and found no evidence of indebtedness whatever. The bank made **NO CONCEALMENT**, but on the contrary invited scrutiny. Mr. Dupuy testifies that he himself has personally "minutely examined all the books, papers and records of the bank." * * "I never was able to find," he says, "that the bank had anything to do with these matters as claimed by Mrs. Evans."

Testimony of Dupuy, *R.*, 326.

Fourth.—Mr. Kennedy, President of the bank, after speaking of the visit of Messrs. Leonard the counsel, and Hall the expert accountant, at the bank, and their examination of its books and papers in behalf of Mrs. Evans, adds: "I have never been able to find a particle of evidence, that we ever received in any shape or form, anything from that plantation, until it was sold under the foreclosure of the mortgage in 1866."

See testimony of S. H. Kennedy, *R.*, *p.* 335.

Fifth.—Ex-Senator Jonas was the counsel of the bank in the legal proceedings then had by the bank, and he negatives the reckless charges of complainant on this subject.

Testimony of B. F. Jonas, *R.*, 276, 277.

Sixth.—The testimony of Mr. David Urquhart, who was familiar with all the incidents, is to the same effect.

Testimony of Urquhart, 289, *et seq.*

Seventh.—The testimony of the complainant given before the Court of Claims Commission in 1873, is in itself conclusive on this branch of the case, as we have already shown. She there shows conclusively, that the cotton brought from Quantico was sold by Wells, and that **HE kept the proceeds** with the exception of eleven or twelve hundred dollars.

The complainant gave this testimony in 1873, when all the facts and incidents were fresh in her memory, and if it were true that the bank had actually received a bale of her cotton, or realized a dollar from the proceeds of the sale of Quantico cotton, she would have then known and said something about it.

See testimony of Mrs. Evans, *R.*, *pp.* 369, 370, 371.

Having thus, as we submit, in the foregoing review, fairly presented and conclusively answered and refuted the points relied on by the complainant, as showing liability by the defendant bank to her, for the damages claimed herein, we now respectfully invite the attention of the Court to some matters of special defence, which may be unnecessary, because of the utter failure of proof against the bank, but which our duty as counsel requires us to present, and the due consideration of which, by your Honors, must dispose of this claim at once and effectually.

Special Points of Defense.

I.

On the 11th of June, 1863, the Commanding General of the Department of the Gulf, by special order, No. 138, put the bank in liquidation. This order ousted the directors of the bank, over their protest, and transferred possession and control of the bank, and its assets, to three military commissioners, who accordingly proceeded to liquidate and close up the bank. This liquidation continued until February 3, 1866, when General Canby restored the bank to the control of its legal Board of Directors.

The order, No. 138, the protest of the Board of Directors of the bank, and the taking possession of the bank and its assets, are fully set forth in the answer, and proved by the documents themselves, and the minutes, and the testimony of the Cashier, and President of the bank.

(See Answer, pages 84–86.)

(See testimony of C. L. C. Dupuy, cashier, *R.* 329–333.)

(See testimony of S. H. Kennedy, President, *R.* 333–335.)

This Court would take judicial notice of such military order and of its effect, without proof.

It is undeniable that this period from June 11, 1863, to February 3, 1866, covers the time of all the operations complained of in this case. In the case of John D. McLemore against the present defendant bank, reported in *1 Otto, 27*, this Court had occasion to consider and pass judicially upon,

this identical military order, and to define its legal effect and operation with regard to the defendant bank itself, considered in reference to acts done, during the period of time, the military liquidation had exclusive authority under this order. After reviewing the facts, this Court then held: "That the proceed-
"ings of General Banks and the liquidators appointed by him,
"constituted 'superior force,' which no prudent administrator
"of the affairs of a corporation, could either resist or prevent,
"is too plain for controversy. It was in the midst of war that
"the order was made, and with an army at hand to enforce it,
"there was nothing left but submission under protest. Any
"other course of action under the circumstances, instead of
"benefiting, would have injured every one who had dealings
"with the bank." * * * "And if loss has been occasioned
"in consequence of the military order in question the bank is
"not responsible for it."

The application of the principle of this decision to the present case must cause the rejection of complainant's demand under any view of the case, **first**, because the transactions complained of all occurred while the military order No. 138 was thus enforced against the bank, and, **second**, because the witnesses of the complainant mention the name of but one person, who in any way, had any business connection with the bank, and that was Mr. Lapeyre, who is reported to have had some conversations with the Provost Marshall or his deputies in 1864. What Mr. Leperyre then said, even as reported, would have amounted to nothing against the bank, (and so the Circuit Court held,) but the defence is complete when we consider that during the times mentioned Mr. Lapeyre was acting *quoad* the bank exclusively in his capacity as one of three military commissioners in liquidation, and for no act of his, as such, could the bank be held liable.

Our answer, however, denied that there was any act done by the military liquidators affecting the complainant

injuriously, and the testimony adduced by her fails to show there was.

Her case is an utter failure in the proofs in every particular, so far as relates to the defendant bank.

The Circuit Judge, after stating that in order to hold the bank liable, it was necessary to prove that either the bank or its agents participated in the conversion either in whole or in part, held, that "under the evidence neither of these is shown, nor is there under the evidence a well-founded suspicion that the bank was guilty of either." The Court continues: "Whatever figure the agents of the bank cut in the whole matter (and we have proof only of the single declaration of Lapeyre, military commissioner, as testified to by Ward) would not, in my judgment, bind the bank, even if it had been in the control of its own agents; but when it is considered that at that time the bank was in the possession and under the control of the military authorities, and not under the control of its directors and stockholders, it would seem preposterous to hold the bank responsible for torts and wrongs with which the stockholders and directors had nothing to do, and that, too, on flimsy hearsay evidence only supported by Ward, who is directly contradicted by Kilbourne. That the wrongs were committed by the military liquidators, and that the bank ratified by its stockholders resuming control, is an assumption without proof, and a conclusion that does not follow." We submit this point with confidence, as being in itself a defence complete and sufficient for the protection of the defendant bank against the demands now made.

II.

OUR NEXT CONTENTION IS, THAT THE JOINING OF THE BANK AS CO-DEFENDENT WITH DAVID URQUHART IN THIS SUIT, IS PURE AFTERTHOUGHT, AND THAT THIS FACT IS CONCLUSIVELY SHOWN BY THE TESTIMONY OF THE COMPLAINANT HERSELF, GIVEN UNDER OATH BEFORE THE COURT OF CLAIMS, IN NOVEMBER, 1873, THREE YEARS PRIOR TO THE INSTITUTION OF THIS SUIT.

The facts of the case were then all fresh in her memory, and the statements then made by her show, that she regarded J. Madison Wells as the spoiliator, who as custodian, under a seizure made by Urquhart, as the mortgage creditor of her husband, brought the cotton from Quantico to New Orleans, sold it, and kept the proceeds, notwithstanding the most persistent efforts of herself and her relatives to make him disgorge it. Our point in this connection is, that nowhere in the testimony then given, does she say, that the defendant bank, either made a seizure or realized, either cotton or its proceeds, or any part thereof, brought by Wells from Quantico.

Extract from the Testimony of Mrs. Evans before the United States Claims Commission.

"*Q.* 'Have you any knowledge of any cotton left on the "Quantico plantation, near Alexandria?'

"*A.* 'Yes, sir; There were between 1700 and 1800 bales "left there by direction of General Banks.'

"*Q.* 'What became of that cotton?'

"*A.* **Five or six hundred bales were stolen by General "Wells, which he confessed to me.'**

"*Q.* 'Who was he?'

"*A.* 'He was called Governor Wells at that time. I "think he was elected Governor about the time the war "closed.'

"'By Commissioner Aldis:'

"*Q.* 'Just tell the story about that?'

"*A.* 'Well, sir; **I think he was the most dishonest "man I ever knew. I told him so.** Mr. Linton had indorsed "some notes, and those notes were in the possession of W. & "D. Irkwood (Urquhart), of New Orleans. They held of "course a privilege on his crop and plantation, and at the "time of secession, I think the winter of 1861, perhaps, Gov-"ernor Moore issued an order that no cotton should be "brought into New Orleans; that it was in danger, he said, of "becoming a bait for the enemy, or some such nonsense, and "hence all cotton remained on the plantations.

"Now, when General Banks went up Red River, there "were 1700 or 1800 bales on the place, 500 or 600 baled and "ready for shipment, and the rest partly baled and stacked in "houses. When we got up to the plantation, my father sent "word to David Irkwood (Urquhart), who was on Governor "Moore's staff, and a very conspicuous officer, that we could "send him this cotton, and that he could dispose of it, and sell "it to the planters who would give sugar for it, and that he "could manage to make the transaction liquidate the debt. "Mr. Linton never owed anybody at all, and this debt "weighed heavy on him. He had peculiar ideas about it, and "it became a sort of unhappiness to my father, and he "wanted to relieve his mind, because it was in an unhealthy "condition. Mr. Irkwood (Urquhart) sent word that **HE**

"would not allow the cotton to be touched, unless we "sent its value in gold to **HIM.** Of coure that was impos- "sible, and **we said nothing more about it.** Governor Wells "had been appointed as keeper as soon as General Banks "made his second visit to Red River, which was in 1864. "We were no longer there, and Governor Wells took posses- "sion of these 500 cotton bales which I proved by the "steamers and the men who took it away, and even the mer- "chants who sold it and the price it brought. **I hold all "those papers.** I went to Governor Wells on the subject, "and he acknowledged these four or five hundred bales, but "he would not acknowledge any more. He said the rest had "been captured by Guerrillas and burnt. I said to him, how "can you set us an example sitting in the gubernatorial chair, "when **you acknowledge you have taken** from the man you "call your best friend, **five hundred bales of cotton.** I don't "call that an honorable code. He said, perhaps, madam, "your ideas of code of honor and mine differ. Those are "the last words I had with him. **He had all his property "taken from his own name, and put in his wife's name, "TO PREVENT ANY REDRESS."**

"'*Q.* Did Governor Wells admit to you that he had taken "from four to five hundred bales of your husband's cotton?'

"'*A.* Yes, sir; that he had moved it as keeper.'

"'*Q.* Did he say that he had accounted for it to you or "anybody else?'

"*A.* I went and asked him why he didn't account for "it—why the merchant hadn't received it? Well, he said "there was an upset condition of things in the country. I "said: 'That is very vague; that doesn't mean anything at "all.' In the meantime the creditors had the plantation seized, "and this cotton, at the rates of cotton then, would have paid "the debt, four or five times over. **He didn't account "for it at all.** He finally was pushed to the wall so very "hard that I think he disgorged eleven or twelve hundred "dollars—some trifling amount.

"*Q.* Did he claim that was all the money he had in his "hands?

"*A.* Yes, sir; all that was in his hands; as for the rest "he said he could not give any account of it. I said, You "were responsible, as keeper, for the whole amount; you took "it from the plantation, and you put it in boats on the Red

"River, and you acknowledge that the testimony of these "men is correct, and these orders are correct. He said, Yes, "but everything was so upset that it was hard to tell what "the guerrillas had taken and what they had left. Said I, What "about these merchants who sold it? and he said, Well, THAT "WAS OTHER COTTON. He was Governor then, and "there was not a lawyer in the City of New Orleans "who would attempt to prosecute him for me, although I "went everywhere with these papers; none of them "would take hold of it because he was Governor."

"*Q.* You say he was keeper when he took these five "hundred bales?

"*A.* Yes, sir.

"*Q.* He took them in your absence—when you were in "Europe with your father and husband?

"*A.* Yes, sir.

"*Q.* You were not present at the time?

"*A.* No, sir.

"*Q.* Did he take them by virtue of any authority from "the United States Government or was it a private thing?

"*A.* He took them as keeper, appointed by the Sheriff, "for that debt.

"*Q* Then he took them under a mortgage?

"*A.* Yes, sir; and he got the privilege of trrnsporting "them on a United States transport. That was the best "of it, and he had them brought down to New Orleans, "BUT BEFORE THEY GOT TO NEW ORLEANS "HE MANAGED TO HAVE THEM DISAPPEAR "AND NOBODY COULD EVER GET HOLD OF IT."

(See testimony of Mrs. Evans, *R.* pages 369–371.)

These words are from the lips of the complainant herself, uttered as a witness under oath in a judicial proceeding. She is estopped now from denying what she thus affirmed to be true. When examined as a witness in the present case her counsel called her attention to the quotations made in the answer from her testimony, given before the United States Claims Commission, and the only correction attempted was, in

regard to what she said Nemours Bienvenu had told her. (See *R.*, 192, 193.)

The facts here stated by Mrs. Evans, are in accord with the allegations in the original bill, to wit, that David Urquhart made the seizure in 1861 and continued it until 1866.

The complainant here gives a very full version of the whole affair about Wells bringing the cotton from Quantico plantation and selling it, and keeping the proceeds.

If it had been true, that the defendant bank, was a party to the spoliation, so recklessly alleged against the bank, in the second amended bill filed in 1878, would the bank have escaped the denunciations which. in her testimony given in 1873, the complainant then hurled at Wells alone, as the spoliator of her property?

III.

THERE IS NO EVIDENCE WHATEVER SHOWING THAT THE DEFENDANT BANK, OR ANY OF ITS OFFICERS OR AGENTS, EVER HAD ANYTHING TO DO IN ANY MANNER WITH THE COTTON SOLD BY C. A. WEED & CO. FOR J. MADISON WELLS.

The only pretense of proof in this direction is, a statement by the witness, Angelo Ward, a Government detective, that on one occasion he was sent to bring Mr. Lapeyre before Provost-Marshal Kilbourn, who questioned him in reference to some cotton, and was asked whether it was not John A. Stevenson's, who had a contract to bring in cotton for the bank, in which the Government had an interest, and that Lapeyre said, "No; it was cotton that he got a permit to bring in. It was Madison Wells' cotton which the bank had a lien

upon; to what extent, of course, I cannot say." (*R.*, 222.) The witness goes on to say that this conversation took place before Col. C. W. Kilbourn when he was Provost-Maashal in May, 1864.

There is nothing in the statement, so attributed to Mr. Lapeyre, that amounts to evidence against the bank, but weak as the statement is, its little force as evidence, is disproved by the very full and connected account given by Col. Kilbourne himself of the occurrence. He states substantially his knowledge of an arrangement by the bank with Stevenson, by which the latter took funds of the bank, into the Confederacy, with which (by permission of Gen. Banks) cotton was purchased, and of which the United States Government was to receive a certain percentage, and about the time of the Red River expedition, the arrival of a boat with cotton was reported by a detective, and (continues Col. Kilbourne) "the Provost-Marshal General, thinking perhaps it was some of the cotton belonging to the bank, sent for the president of the bank (he was really not then president, but one of the military liquidators), and he satisfied the General, in my presence—as I was present at the interview—that the cotton was not purchased with any money belonging to that bank, that it was purchased with money that belonged to some other fund, or purchased with some other fund different from that, and having nothing to do with this arrangement or agreement entered into between the commanding general and this bank, and he was set free. We had nothing more to do with it. If my memory serves me right, I think he stated, that the cotton that came down was consigned to Mr. Charlie Weed, or C. A. Weed & Co., whom I knew very well. * * * I think, or my impression now is, that this cotton was represented by Mr.

Lapeyre to have been brought in on a permit from J. Madison Wells."

Testimony of C. W. Kilbourne,(*R* 204)

Nowhere does this witness say what Mr. Lapeyre stated the bank had a lien upon this cotton.

Now if the bank had had any right to, or interest in, or a lien upon, this cotton, would not Lapeyre as military liquidator, have then and there protected the interests of the Bank? Why not? He is shown by the testimony of these, the only witnesses who speak on the subject, to have asserted no right for the bank whatever as against this cotton. If he had said or believed that the bank had a lien on it, would he have stopped merely with asserting this fact? Would he not have gone further and used his authority as a military liquidator, if necessary, and secured the rights of the bank? No, the proof is, he did nothing whatever, toward securing this cotton for the bank, and hence the only rational conclusion, from such conduct on his part is, that the bank had no interest whatever to protect, or he would have protected it.

IV.

On the trial in the Circuit Court, complainant's counsel, in order to avert the force of certain documentary proofs, contended that, as the court-house of Rapides Parish was, with its records, destroyed by fire in 1864, the original order of seizure and the appointment thereunder of J. M. Wells as keeper, which are found in Record 14,665, offered as evidence by defendant, **WERE MANUFACTURED FOR THE OCCASION.**

First.—This gratuitous and unfounded assertion is sufficiently answered or rather denounced by the learned

judge of the Circuit Court, when, in his opinion, he says: "The high character of the attorneys appearing at that time, in that case, one of whom (Senator Jonas) swears that he saw the original, forbids the Court from such conclusion." (*R* 635) Mr. Jonas in his testimony in several places reiterates the statement that his knowledge of those papers was personal and obtained from inspection of the documents themselves.

He says, on p. 282: "*Q.* Do you remember to have seen the original writ of seizure and sale with its return on it?" "*Ans.* Yes sir, I remember to have seen it. I remember to have seen the instructions from Neill to Wells." And on p. 275, "I remember myself that there was such a paper, and that the sheriff gave such instructions to Governor Wells. I don't know the verbiage. I know it is quoted correctly." And on p. 285, "We know it (the seizure) from seeing the appointment of the sheriff. I am almost positive it was affixed to the return made by the sheriff. I know it was a fact. Urquhart and ourselves had a conversation with Wells on the subject of the institution of this suit. Governor Hyams had been Wells' lawyer for thirty years."

An inspection of this Record 14,665 shows, that the verity of these documents is sustained by the sworn statements then made both by David Urquhart and J. Madison Wells.

Mr. Urquhart as a witness on the stand, reaffirms the truth of the statements then made by him.

(See testimony of D. Urquhart, *R. p.* 296.)

V.

The judgment in favor of the defendant bank against the estate of Stephen Duncan Linton, was rendered contradictorily with the complainant, **first**, as the legal representative of his estate and, **second**, as the instituted heir or universal legatee of his estate.

(*a*) The defendant bank first brought suit on the eight mortgage notes, in the Fourth District Court of New Orleans, No. 17,703, September 26, 1866.

The petition prayed for judgment in the sum of $86,666.66, with 8 per cent. interest, from 1862. (*R.* 427.) The complainant **accepted service** of this petition as **provisional administratrix** of S. D. Linton. (*R.* 428.) She **then** made no defense to the suit, set up no reconventional demand, although the claim of the bank directly affected the "Quantico" plantation, and on the 1st of June, 1867, judgment was rendered as prayed for. (*R.* 440.)

(*b*) Subsequently the complainant made opposition judicially to the claim of the bank and was defeated, as the record shows under the following circumstances.

On the 9th of April, 1877, J. Madison Wells, Jr., as executor of the estate of S. D. Linton, filed a provisional account, distributing the proceeds realized from the sale of the Quantico plantation, in which he recognized as a **creditor**, "the Louisiana State Bank, on a judgment rendered in her favor in the Fourth District Court of New Orleans, for $86,666, with eight per cent. interest thereon, from 1862." (*R.* 544.)

To this account the complainant, on the 16th of June, 1877, filed a petition of opposition in "her capacity as testamentary executrix, and universal legatee of the succession

of S. D. Linton, deceased," in which she declared that "she opposes claim of State Bank on a judgment in its favor, in District Court of New Orleans, for the reason, that said debt is not due to the bank, and if ever due, is prescribed." (*R.* 544.)

At the same time the defendant bank, by petition, asserted its rights as judgment creditor and opposed various items on the account. (*R.* 545.)

On the issues thus made, judgment was rendered in favor of the bank, by the Parish Court, February 5, 1878. (*R.* 601, 602.)

And affirmed by the Supreme Court. (*R.* 605.)

(See opinion reported in 31 An. 130.)

If the succession of Stephen Duncan Linton had then had a valid claim, of any nature or character, against the defendant bank, certainly such claim would then have been mentioned or pleaded, in some shape or manner, against the defendant bank, by the legal representative or universal legatee of his estate, in order to offset or defeat the bank's claim. But nothing of the kind was done by the complainant.

More than that, the estate of Linton was opened and settled in the Parish of Rapides, where the Quantico plantation was situated, and where the events are alleged to have transpired, upon which the complainant bases her demand for damages, and if the defendant bank had indeed been liable to the estate of Linton for cotton taken, or for a seizure of the plantation, or otherwise, it is fair to presume that the then legal representative of the estate, J. Madison Wells, Jr., would have known or heard of the fact, and would have inventoried the claim, and have then brought suit against the bank, or at least have opposed the bank's recognition as a judgment creditor on the account.

Conclusion.

This suit, involving an amount many times more than the capital stock of the defendant bank, was instituted more than fifteen years ago.

Its trial has been delayed, by repeated applications for continuance from the complainant. (See applications for continuance, *R.* 98–102.)

The bank has never asked for a continuance, but has always been ready to meet and refute, the utterly unfounded pretensions herein set up against her.

It is a singular and significant fact, that the institution, and long continued pendancy of this suit, sounding in damages for **millions**, never at any time, affected the market value of the stock of the bank, to the extent of a dollar, or even a dime, a share.

The record shows, that in the conduct of the defense of this suit, the bank has not only practiced no concealment whatever, but on the contrary, has always invited scrutiny. That from the date of the institution of the suit, to the day of final hearing, the bank announced to the complainant that all its books, records, writings and documents, of any and every character, were held open to her inspection; and that her numerous counsel (as they succeeded each other) were **all and severally**, without exception, invited and urged to come to the bank and inspect the books for themselves.

It is a fact, both remarkable, and unprecedented, that this open-handed offer and challenge for investigation, was not

promptly accepted, but remained open for many years, and until after many able counsel, representing complainant, had withdrawn from her cause, when finally, as late as 1884, one of her counsel (Mr. Leonard) braced himself for the test, and came to the bank, accompanied by an able expert accountant (Mr. Hall). Arrived at the bank, a private office was assigned them, where they came and went at will, and at their leisure, and did examine, all the books and documents in the possession of the bank, that they chose to call for. What was the result? It was simply and absolutely fatal to the complainant's case. The officers of the bank knew what the result of this examination would be, and therefore, they had courted it, in every way. They knew that there was not, and never had been, a single line of evidence, in any book or document in the bank, showing the receipt at any time, of any cotton or proceeds of cotton, or other property, from the Quantico plantation, (except as explained in the answer subsequently to 1866.)

Mr. Leonard was the only counsel for complainant who had the courage to make and abide the test of this investigation, which might result disastrously to his claim, and **DID SO RESULT.**

The counsel and his expert came, and saw, and read everything, yet found nothing for which, with eager eyes, they had come and sought.

The testimony of Mr. Hall (the expert) was taken after he had made his examination of the books of the bank, and his silence is significant and conclusive, as to what he found, or rather did not find, in them. He found nothing there to sustain the demand of the complainant, simply because the bank had never received money or property belonging to the complainant, or in what she was interested.

Now, ordinarily speaking, we submit, that such frank and full disclosure voluntarily proffered, of all its books and records for examination, by a defendant corporation, to an opponent, seeking relief by a **bill of discovery**, would have been deemed satisfactory and sufficient. It should have been so. But it was not so in this case. The litigation must go on. It did go on, and the defendant has in addition, **proved her defense affirmatively** by its President (Mr. Kennedy) and its cashier (Mr. Dupuy), and also by the two living witnesses, who actively participated in all three transactions, ex-Senator Jonas, and Mr. David Urquhart.

By these witnesses, and other evidence, it has been proved **affirmatively**, that the bank received no cotton whatever, nor any proceeds of cotton from the Quantico plantation; that it was David Urquhart who had sued Linton in 1861, and had made and continued the seizure complained of; that the obligations held by the bank against Linton, which did not mature until 1862 and 1863, **were never sued on in any Court until 1866**; that the alleged acts of the bank complained of, were stated in the bills of complainant to have occurred between August 23, 1863, and the year 1865, a period of time covered by the operation of military order, No. 138, during which time, the directors were ousted, and the bank was placed in the hands of military liquidators, for whose acts the bank was not responsible. These and numerous other defences were made, which are hereinabove presented, and the case was finally tried, very fully argued, and, in an opinion which is brief but very able and exhaustive, the learned Judge of the Circuit Court showed conclusively, how and why, the complainant had no case whatever against the bank. Still the litigation must continue, and, after unusual

delay, a second appeal, barely effected a lodgement in this Court, and the defendant bank now rejoices in the knowledge that the era of this long continued litigation will soon reach its termination by a final decree of this exalted tribunal.

If the complainant in this case will read the original bill herein filed, she will find her own averment, that the seizure complained of was made by David Urquhart, in 1861, and that this seizure continued until 1866; and if she will turn to her own solemn averments, as a witness, given before the United States Claims Commission, in 1873, when the incidents were all fresh in her memory, she will read there, the name of **JAMES MADISON WELLS alone**, as the **SPOILIATOR** to be complained of, who, as custodian under the Urquhart seizure, brought some of the Quantico cotton to New Orleans, sold it, and pocketed the proceeds; that she then charged him with this spoiliation, and endeavored to employ counsel to bring suit and obtain judgment against him, but that no counsel was to be found in New Orleans who was willing to sue this spoiliator, Wells, because he was then Governor of the State of Louisiana.

Speaking of this spoiliation by Wells, the complainant then testified that "he (Wells) was finally **pushed to the wall so very hard**, that I think he **DISGORGED** eleven or twelve hundred dollars—some trifling amount." (*R.* 371.)

We think the party thus proved to be the real spoiliator. should then, have been made, to make a **full disgorgement.**

The complainant and her friends, should not have been content with the partial disgorgement then made.

The fact, however, that even a partial disgorgement was made, is sufficient for us, because, that fact shows conclusively, who the spoiliator was.

It was the complainant's misfortune, perhaps, as the Courts were then open in New Orleans, that she did not then sue Wells, as she would then have enjoyed the opportunity, at least, of having before the Court **the rightful defendant.**

Be this as it may, the complainant's own testimony then given shows, what all the testimony given in this case confirms, that **JAMES MADISON WELLS, WAS THE SPOILIATOR,** who possessed a portion of the cotton grown on the Quantico plantation, under mortgage and pledge to the creditors of Linton, and that Wells sold the cotton and converted the proceeds to his own use.

The testimony conclusively refutes the unfounded pretension that the bank, at any time or in any manner, received any cotton or other property from the "Quantico" plantation, or elsewhere, in which the complainant has, or had, any interest, either as "instituted heir," of the "more than twenty times insolvent" Linton, or otherwise.

The case is respectfully submitted with the prayer, and in the confident belief that the judgment of the Circuit Court, dismissing the bill and amended and supplemental bills, will be affirmed.

J. McCONNELL,
Counsel for the State National Bank.